

CHAPTER 4120
DEPARTMENT OF ENERGY AND ECONOMIC
DEVELOPMENT
PETROLEUM SUPPLY EMERGENCIES

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4120.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of parts 4120.0100 to 4120.6400 the terms defined in this part have the meanings given them.

Subp. 2. **Agriculture.** "Agriculture" means activities of establishments primarily engaged in food production, processing, and sale classified under the industry code numbers specified below as set forth in "Standard Industrial Classification Manual," 1972 edition, and the transport of goods and commodities for the below defined activities:

A. Major Group 01-Crops, except for industry code numbers 0132 tobacco, and 0181 ornamental floriculture and nursery products;

B. Major Group 02-Livestock, except for animal specialties, industry code numbers 0271, 0272, and 0279;

C. Major Group 07-Agricultural Services, except for industry code numbers 0742 veterinary services for animal specialties, 0752 animal specialty services, 0781 landscape counseling and planning, 0782 lawn and garden services, and 0783 ornamental shrub and tree services;

D. Major Group 09-Fishing, Hunting, and Trapping;

E. Major Group 20-Food and Kindred products, except for all industry codes under Group 208 Beverages, and 2065 candy and other confectionary products;

F. Group 514-Groceries and Related Products (all industry codes found thereunder);

G. Group 515-Farm Product Raw materials (all industry codes found thereunder); and

H. Major Group 54-Food Stores.

Subp. 3. **Assistant commissioner.** "Assistant commissioner" means the assistant commissioner of the Minnesota Department of Energy and Economic Development who heads the Energy Division.

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Subp. 4. **Baseline consumption.** "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules: the preceding 12 months; or the most recent three-year average; or a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted.

Subp. 5. **Btu.** "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes.

Subp. 6. **Cargo, freight, and mail hauling, including newspaper deliveries.** "Cargo, freight, and mail hauling, including newspaper deliveries" means: motor carriers for hire, licensed and operating under Minnesota Statutes, sections 221.011 to 221.293 including independent owner-operators transporting goods under a lease or contract indicating their "for hire" status, where the lease can be produced by the driver-operator; local cartage carriers, licensed and operating under Minnesota Statutes, section 221.296; interstate motor carriers, operating in Minnesota under Minnesota Statutes, sections 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier; trucks that have truck bodies specifically designed for cargo and freight hauling and are commercial vehicles as defined in subpart 9; and rail, barge, and ship transportation of cargo or freight.

Subp. 7. **Carpool.** "Carpool" means a continuing travel arrangement by which three or more persons travel together in a vehicle owned or rented by one or more of such persons.

Subp. 8. **Commercial building.** "Commercial building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls.

Subp. 9. **Commercial vehicles.** "Commercial vehicles" means vehicles registered and licensed in the commercial class with the division of driver and vehicles services of the Department of Public Safety, or vehicles that by their design, size, or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession or other evidence of commercial use are obviously being used for commercial purposes.

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

Subp. 11. **Company-owned vehicles.** "Company-owned vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer.

Subp. 12. **Consumer.** "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane, or alcohol.

Subp. 13. **County or municipal fuel coordinator.** "County or municipal fuel coordinator" means a person who has been appointed by the county board or city council to act as local fuel allocation resource person.

Subp. 14. **Demand.** "Demand" means the quantity of products or services for which there are willing and able purchasers.

Subp. 15. **Department.** "Department" means the Minnesota Department of Energy and Economic Development.

Subp. 16. **Division.** "Division" means the division of emergency services of the Department of Public Safety.

Subp. 17. **Division director.** "Division director" means the director of the division of emergency services.

Subp. 18. **Electric utility.** "Electric utility" means an entity engaged in the generation, transmission, or distribution of electric energy for sale.

Subp. 19. **Emergency vehicle.** "Emergency vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly-owned law enforcement vehicle or privately-owned vehicle used by a law enforcement officer for police work under agreement, express or implied, with the local authority; a vehicle of a licensed emergency ambulance service, whether publicly or privately owned; an emergency vehicle of a municipality, department or public service corporation including emergency services vehicles approved by the chief of police of a municipality, the county sheriff, or the division director; a vehicle of a utility or contractor while performing emergency repairs or maintenance for electric, water, waste treatment, natural gas or telecommunications utilities and end-user primary services, and petroleum, petroleum products or natural gas pipelines or facilities; a vehicle of the state, county, municipal, or other subdivision of government used for snow removal, emergency road and traffic signal repair or search and rescue operations, or privately-owned vehicles of a contractor under contract to perform these services.

Subp. 20. **Employer-provided parking.** "Employer-provided parking" means a space such as a lot, garage, or other space, or portion thereof, which is used for the parking of commuter vehicles, and which is wholly or partly owned or leased by an employer or otherwise made available to its employees, except that this term shall not include park-and-ride facilities or customer parking provided by a retail or service establishment.

Subp. 21. **Employment site.** "Employment site" means a building, facility, complex or site at which employees work or study, or any combination of such buildings or sites which are geographically close.

Subp. 22. **Energy production.** "Energy production" means transportation of energy or primary fuels by pipeline, transmission line, rail, barge or a motor carrier included in the definition of cargo, freight and mail hauling or other trucks and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels, and electrical energy.

Subp. 23. **Environmental standards.** "Environmental standards" means the laws, regulations, and rules, federal and state, intended to protect the environment.

Subp. 24. **Essential government services.** "Essential government services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, operations of the division of emergency services and the emergency operating center, hearings of local energy conservation boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI, and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services.

Subp. 25. **Extracurricular activities.** "Extracurricular activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school.

Subp. 26. **Flexible work hours.** "Flexible work hours" or "flextime" means a work system in which employees at an employment site have some discretion in their choice of working hours.

Subp. 27. **Forecast.** "Forecast" means a projection of future demand or supply for a specified time period.

Subp. 28. **Fuel oil.** "Fuel oil" means a liquid or liquifiable petroleum product with a flashpoint above 100 degrees Fahrenheit which is used to generate heat or power including middle distillate oil or residual oil.

Subp. 29. **Health and residential care services.** "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers,

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residential mental health centers, and residential care centers for the retarded or handicapped.

Subp. 30. **Highways.** "Highways" means interstate, trunk, county state-aid, county, and municipal state-aid highways in Minnesota, as defined in Minnesota Statutes, section 160.02, subdivisions 2 to 5 and 7, and United States Code 1980, title 23, section 101.

Subp. 31. **Homeowner.** "Homeowner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person.

Subp. 32. **Jitney.** "Jitney" means a spontaneous carpool formed by driving along an existing transit route and picking up riders for a fare or participating in a telephone ride exchange system. Jitneys supplement existing transit service.

Subp. 33. **Licensed motor vehicle dealer.** "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minnesota Statutes, section 168.27, subdivisions 2 to 25.

Subp. 34. **Middle distillate.** "Middle distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a 50 percent boiling point in the ASTM D86 standard distillation test falling between 370 degrees and 700 degrees Fahrenheit, except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded.

Subp. 35. **Military uses.** "Military uses" means the activities of the armed forces of the United States and of the Minnesota Department of Military Affairs, the Office of Adjutant General, military reservations, installations, armories, air bases, and facilities owned or controlled by the state for military purposes, and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minnesota Statutes, chapters 190 to 193, known as the military code.

Subp. 36. **Moped.** "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor.

Subp. 37. **Motorcycle.** "Motorcycle" means a vehicle with two wheels in tandem, propelled by an internal combustion engine, and sometimes having a sidecar with a third wheel.

Subp. 38. **Motor fuel.** "Motor fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine.

Subp. 39. **Motor vehicle owner.** "Motor vehicle owner" means a person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period greater than seven days.

Subp. 40. **Park-and-ride facility.** "Park-and-ride facility" means a parking facility the use of which is limited exclusively to the parking of commuter vehicles whose occupants transfer at the facility to transit or paratransit services.

Subp. 41. **Passenger transportation services.** "Passenger transportation services" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, vanpools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, air and rail passenger transportation except for air charter services, and special transportation services for the elderly or handicapped.

Subp. 42. **Permit-sticker.** "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety to designate the weekday on which a vehicle issued that sticker is prohibited from being operated.

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Subp. 43. **Person.** "Person" means an individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable or educational institution.

Subp. 44. **Plant protection.** "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes.

Subp. 45. **Prohibited day.** "Prohibited day" means the day for which a vehicle owner has been issued a permit-sticker, designating it a "no-driving" day for that vehicle.

Subp. 46. **Residence.** "Residence" means the place where a natural person lives, including hotels and motels and buildings being used as emergency housing facilities.

Subp. 47. **Residual fuel oil.** "Residual fuel oil" means the fuel oil commonly known as: number 4, number 5, and number 6 fuel oils; bunker C; navy special fuel oil; and all other fuel oils that have a 50 percent boiling point over 700 degrees Fahrenheit in the ASTM D-86 standard distillation test.

Subp. 48. **Sanitation services.** "Sanitation services" means: the collection and disposal for the public of solid or liquid wastes and hazardous wastes, whether by public or private entities; the maintenance, operation and repair of liquid purification and waste facilities; and the provision of a water supply by public utilities, whether private or publicly owned and operated.

Subp. 49. **Shortage.** "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period.

Subp. 50. **Staggered work hours.** "Staggered work hours" means employee starting and quitting times stipulated at step intervals by the employer so that work arrival and departure times of employees on a single shift are spread over a period of at least two hours.

Subp. 51. **State set-aside.** "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs under Minnesota Statutes, section 116J.16.

Subp. 52. **Subscription bus.** "Subscription bus" means a transit service in which employers or groups of employees contract with a public or private bus operator to provide daily commuter service for a group of subscribers on a prepaid or daily fare basis, following a fixed route and a schedule tailored to meet the needs of the subscribers.

Subp. 53. **Supplier.** "Supplier" means a firm or a part of a subsidiary of a firm (other than the Department of Defense) which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) a petroleum product to wholesale purchasers or end users, including refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers, and retailers.

Subp. 54. **Telecommunications.** "Telecommunications" means the repair, operation, and maintenance of voice, data, telegraph, video, and similar communication services for the public by a communications common carrier, or by a firm providing the same service in direct competition with a communications common carrier.

Subp. 55. **Tenant.** "Tenant" means a person who occupies (but does not own) a dwelling under an oral or written agreement, lease, or contract, for a period of time, which requires the payment of rent.

Subp. 56. **Vanpool.** "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to 15 adult passengers.

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Subp. 57. **Vehicle lessee.** "Vehicle lessee" means a person, firm, or corporation possessing a motor vehicle by lease.

Statutory Authority: *MS s 116J.15*

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

4120.0200 AUTHORITY.

These parts are authorized by Minnesota Statutes, section 116J.15. These parts will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, section 212, United States Code, 1976 and 1979 supplement III, title 42, section 8512.

Statutory Authority: *MS s 116J.15*

4120.0300 PURPOSE.

These parts identify measures that may be used in the event of a petroleum supply emergency. The further purposes of these parts are: to protect the health and safety of the citizens of the state by ensuring that certain priority petroleum users have sufficient fuel to conduct essential activities; to facilitate the distribution of supplies to the public in a fair manner; to identify and authorize the actions to be undertaken by governmental agencies in an energy supply emergency; to describe the responsibilities of major employers and school district authorities in petroleum supply emergency planning and implementation; to establish an appeals system and procedures for exemptions from and exceptions to emergency measures; and to authorize the state executive to provide for the public health, safety, and welfare during an energy supply emergency.

Statutory Authority: *MS s 116J.15*

4120.0400 SCOPE OF RULES.

These parts shall apply:

A. generally, during a declared energy supply emergency (see part 4120.1200);

B. generally, during a declared energy supply alert (see part 4120.1100); and

C. to the Minnesota Department of Energy and Economic Development when the department is preparing to recommend that an energy supply alert or an energy supply emergency be declared.

Statutory Authority: *MS s 116J.15*

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

4120.1100 ENERGY SUPPLY ALERT.

An energy supply alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

An energy supply alert may be declared when the department forecast indicates a reasonable likelihood that an energy supply shortage will occur within six months from the date of declaration.

The commissioner shall have sole responsibility for declaring an energy supply alert.

Statutory Authority: *MS s 116J.15*

4120.1200 ENERGY SUPPLY EMERGENCY.

Subpart 1. **Definition.** An energy supply emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

Subp. 2. **Department of Energy and Economic Development.** When the department's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the commissioner may recommend that an energy supply emergency be declared by submitting a written statement to the executive council or legislature. The statement shall include the factors the commissioner considered in reaching a decision to recommend that an emergency be declared and the reasons for the recommendation.

Subp. 3. **Executive council or legislature.** The executive council (consisting of the governor, the lieutenant governor, the attorney general, the auditor, the treasurer, and the secretary of state) or the legislature has responsibility for declaring an energy supply emergency.

An energy supply emergency automatically expires in 30 days, unless renewed by the legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minnesota Statutes, section 116J.15, subdivision 3.

Emergencies may be declared for all or part of the state and measures may be invoked accordingly. The declaration of emergency shall define the geographic area included in the energy supply emergency.

The declaration shall be promptly disseminated and brought to the attention of the general public by the executive council or legislature, whichever body declares the emergency. The energy supply emergency resolution shall be promptly filed with the division, the department, and the secretary of state.

Statutory Authority: *MS s 116J.15*

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

4120.1300 OPERATING ORGANIZATION DURING EMERGENCY.

Subpart 1. **Energy emergency operating center.** During a declared energy supply emergency, the division will set up an energy operating center.

The director of the emergency operating center will be the division director. The division director shall oversee the implementation of the emergency plan.

The emergency operating center will be located at a site designated by the division director and staffed by personnel from the division, the department and other state agencies as deemed necessary by the division director and approved by the governor.

Subp. 2. **Minnesota Department of Energy and Economic Development.** The department shall assist the division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

The department shall select and recommend to the governor the least restrictive measures specified in parts 4120.4100 to 4120.6400, capable of eliminating a fuel shortage.

The assistant commissioner shall review employer and school district conservation plans and certify those which meet the requirements set out in parts 4120.5300 or 4120.5400.

The commissioner shall make the final decision on each appeal taken from measures contained in these parts.

Subp. 3. **Emergency services.** The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

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The division shall use the regional and local fuel coordinators to coordinate emergency operations throughout the state.

By January 1, 1983, the division of emergency services shall develop an internal management and operations plan for implementing the measures contained in these parts.

Subp. 4. **Directing state agencies.** The governor may order any state agency or department to carry out the measures contained in these parts under the powers given the governor in the Minnesota Civil Defense Act, Minnesota Statutes, chapter 12.

Statutory Authority: *MS s 116J.15*

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

4120.1400 LOCAL ENERGY CONSERVATION BOARD.

Subpart 1. **Counties and cities.** Each county and each city of the first class shall create a local energy conservation board to hear requests for exemptions or exceptions to the measures listed in parts 4120.4200, 4120.4300, 4120.4400, subparts 1 and 4, 4120.5100, 4120.5200, and 4120.5500 to 4120.6400.

The governor may order additional local energy conservation boards to be established upon the department's determination that additional boards are necessary to ensure compliance with the timing provisions in part 4120.2300.

The appointment of additional local energy conservation boards and their conduct shall be governed by the procedures set forth in subpart 2 and parts 4120.2100 to 4120.2400.

Subp. 2. **Members.** The chair of the county board of commissioners shall appoint a five-member county local energy conservation board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the county fuel coordinator is not able to sit on the local conservation board, an additional member shall be selected from the public. The county attorney shall advise the local energy conservation board.

For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal local energy conservation board which includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the city fuel coordinator is not able to sit on the local conservation board, an additional member shall be selected from the public. The city attorney shall advise the local energy conservation board.

Subp. 3. **Appointments.** Appointments to the local energy conservation board shall be made when an energy supply alert or energy supply emergency is declared. The appointer shall make reasonable efforts to avoid any conflict of interests in appointing the members of the local energy conservation board.

Subp. 4. **Quorum.** Three members shall constitute a quorum. The chair of the local energy conservation board shall be designated by the appointing authority.

Statutory Authority: *MS s 116J.15*

4120.1500 PENALTIES.

Subpart 1. **Statutory penalties.** Penalties for the violation of any provision of the plan are set out in Minnesota Statutes, section 116J.30.

Subp. 2. **Misdemeanor.** Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is \$500 or 90 days or both. Each day of violation shall constitute a separate offense.

Subp. 3. **Enforcement.** The plan may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

Subp. 4. **Civil penalties.** A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than \$10,000 for each such violation. These funds are payable to the general fund in the state treasury.

Statutory Authority: *MS s 116J.10*

APPEALS

4120.2000 LOCATION OF APPEAL.

An appeal shall be delivered by mail or in person to the following location:

A. An appeal of mandatory measures, except those described in part 4120.4400, items A and B and part 4120.5200, shall be heard by the local energy conservation board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

B. An appeal from a decision not to certify an employer conservation plan and an appeal from an order to implement an employer plan shall be heard by an administrative law judge appointed by the chief administrative law judge and shall be directed to the Office of Administrative Hearings, Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

C. An appeal of an order to curtail delivery of fuel oil, part 4120.4400, item C, or an order to adopt emergency rules for relaxation of environmental standards part 4120.4400, item A, and an appeal of priority status shall be heard by an administrative law judge appointed by the chief administrative law judge and shall be directed to the Office of Administrative Hearings, Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

Statutory Authority: *MS s 116J.10*

History: *L 1984 c 640 s 32*

4120.2100 CONTENT OF APPEAL.

Subpart 1. **Action related to declared energy supply emergency.** An appeal from an action taken pursuant to a declared energy supply emergency or under authority of these parts shall be in writing and signed by the appellant. The appeal shall state:

A. full identification of appellant and where appellant can be located to receive notice of decision;

B. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the action;

C. the bases of the appeal, including the reasons the appellant believes the action to be unjust or unwise;

D. the names and addresses of persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal;

E. the nature of the relief sought, whether reversal, modification, or some other relief.

Subp. 2. **Other appeals.** The appeal of a decision not to certify an employer conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer claims compliance with part 4120.5200. In the case of an appeal from a decision not to approve part 4120.5200, subpart 11, item A employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program

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performance is based and a calculation of appellant's baseline consumption.

Statutory Authority: *MS s 116J.10*

4120.2200 TIMING AND PROCEDURES.

Subpart 1. **Hearing date.** Within three working days after receipt of an appeal, the local conservation board or administrative law judge, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The chair of the local conservation board (or designate), or the administrative law judge, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in part 4120.2000. A local energy conservation board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

Subp. 2. **Administrative Procedure Act.** Appeals shall be governed by the Administrative Procedure Act, Minnesota Statutes, sections 14.01 to 14.70 and the rules of the Office of Administrative Hearings, parts 1400.5200 to 1400.8500, except that during an energy supply emergency the provisions of parts 4120.2000 to 4120.2400 shall supersede the above-cited rules wherever the two conflict with one another.

Subp. 3. **Parties.** The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the emergency operating center. Appeals from a decision not to certify an employer or school district conservation plan shall name the assistant commissioner as a party to the appeal.

Subp. 4. **Representation.** A party may be represented by counsel.

Subp. 5. **Compliance by appellant.** An appellant subject to provisions of these parts must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under part 4120.2400.

Subp. 6. **Informal disposition.** Informal disposition of an appeal or any issue in an appeal may be made at any point in the proceeding by stipulation, agreed settlement, or consent order between the appellant and the emergency operating center. In the case of employer and school district conservation plans, the assistant commissioner shall have the power to informally dispose of an appeal by agreement or consent order.

Subp. 7. **Appellant's failure to appear.** Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

Subp. 8. **Operating center's failure to appear.** The failure of the emergency operating center to appear at a hearing of a local energy conservation board on an appeal from an emergency measure shall not constitute a default or bar the commissioner from reversing the board's decision so long as the commissioner complies with the timing provisions in part 4120.2400, subpart 3.

Subp. 9. **Prehearing conference.** The administrative law judge or local energy conservation board may order a prehearing conference to be held at any time prior to a hearing, if a conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two working days before the date of the conference.

Subp. 10. **Appeals not to be heard.** Appeals shall not be heard if received more than ten working days after the termination or expiration of the energy

supply emergency.

Statutory Authority: *MS s 116J.10*

History: *L 1984 c 640 s 32*

4120.2300 HEARINGS.

Subpart 1. **Conduct of hearing.** An appellant has a right to a hearing before the local energy conservation board, or the administrative law judge, whichever is appropriate. (See part 4120.2000.) At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

Subp. 2. **Official record.** The local energy conservation board or the administrative law judge shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing shall bear the expense of preparing the transcript.

Subp. 3. **Procedures.** The chair of the local energy conservation board and the administrative law judge shall use procedures set by the Office of Administrative Hearings at the hearing. The administrative law judge or local conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

Statutory Authority: *MS s 116J.15*

History: *L 1984 c 640 s 32*

4120.2400 DECISION.

Subpart 1. **Basis.** No factual information or evidence which is not part of the record shall be considered by the board or the administrative law judge in deciding an issue in an appeal, except that official notice may be taken of pertinent facts.

Subp. 2. **Recommended decision.** Within two working days after the hearing is closed, the local conservation board or the administrative law judge shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based. A copy of the recommendation shall be served by first class mail on all parties to the appeal and delivered to the commissioner with the whole record of the appeal. Service is effective on the postmark date.

Subp. 3. **Decision by commissioner.** The commissioner may affirm or reverse a decision of a local conservation board or an administrative law judge or may remand the appeal for further hearing on specified parts. The commissioner must notify the appellant of an intent to reverse or remand a decision within two working days after receipt of the recommended decision. The commissioner shall issue a written statement setting forth the grounds for reversing a recommended decision no later than five working days after receipt of the recommendation, and a copy of the statement shall be served on the appellant and sent to the local conservation board or administrative law judge by first class mail. Failure of the commissioner to give timely notice of intent to reverse or remand a recommended decision will act to automatically affirm the recommended decision.

Subp. 4. **Judicial review.** The appellant may seek judicial review of a final decision of the commissioner in accordance with the Minnesota Administrative Procedure Act, Minnesota Statutes, sections 14.01 to 14.70.

Statutory Authority: *MS s 116J.15*

History: *L 1984 c 640 s 32*

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PETROLEUM SUPPLY EMERGENCIES 4120.3200

PRIORITY USES

4120.3100 PRIORITY USES OF FUEL OIL.

Subpart 1. **Purpose.** The priority ranking set out below, and the allocation and conservation measures contained in parts 4120.4100 to 4120.4400, are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before the lower priority consumers.

Subp. 2. **Priority uses.** In an energy supply emergency resulting from a shortage of fuel oil, highest priority uses are those essential for the health and safety of the citizens of the state. Uses within categories are not ranked by preference.

- A. First priority fuel oil uses are:
- (1) health and residential care services;
 - (2) residential heating;
 - (3) passenger transportation;
 - (4) plant protection;
 - (5) emergency vehicles;
 - (6) telecommunications;
 - (7) energy production;
 - (8) agriculture;
 - (9) sanitation services; and
 - (10) essential government services.

B. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Second priority fuel oil uses are:

- (1) cargo and freight hauling, except for the first priority uses as defined in item A.
- (2) personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in parts 4120.5100 to 4120.6400.

C. Third priority uses are those not essential for the immediate health and safety of the citizens of the state. These include:

- (1) schools and religious institutions;
- (2) government, except those services listed in item A;
- (3) commerce, except those services listed in item A;
- (4) industry, except those services listed in item A.

D. In an energy supply emergency, suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available.

E. Vehicles considered to be transporting agricultural products must have the words "first priority agricultural product" on their bill of lading or must be visibly transporting first priority agricultural products.

F. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures developed according to Minnesota Statutes, section 116J.16. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

Statutory Authority: *MS s 116J.15*

4120.3200 PRIORITY USES OF MOTOR FUEL.

Subpart 1. **Purpose.** The priority ranking set out below and the supply management and conservation measures contained in parts 4120.5100 to 4120.6400 are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

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Subp. 2. **Priority uses.** In an energy supply emergency resulting from a shortage of gasoline, diesel fuel, or other petroleum product used as a motor fuel, higher priority uses are those necessary for protecting the health and safety of the citizens of the state, and minimizing the economic disruption of the state's economy. Uses within priority categories are not ranked according to preference.

A. First priority motor fuel uses are:

- (1) military uses;
- (2) emergency vehicles;
- (3) energy production;
- (4) sanitation services;
- (5) telecommunications;
- (6) agriculture;
- (7) passenger transportation;
- (8) cargo, freight, and mail hauling, including newspaper deliveries;

and

(9) aviation ground support vehicles.

B. Exemptions granted in parts 4120.5100 to 4120.6400 are based on the above list of first priority uses.

C. First priority consumers may apply for state set-aside product as provided by Minnesota Statutes, section 116J.16, if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures adopted according to Minnesota Statutes, section 116J.16. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

D. Users claiming an exemption under these parts or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these parts and subject the user to the penalties described in part 4120.1500.

E. When a motor fuel is also used as a home heating fuel and that specific fuel is in short supply, the fuel oil priority rankings described in part 4120.3100 shall apply.

Statutory Authority: *MS s 116J.15*

4120.3300 SEVERE SHORTAGE.

If the commissioner determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority consumers of motor fuel or diesel fuel, then the commissioner shall advise the governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The governor may order the curtailment of priority consumers when in the governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

Statutory Authority: *MS s 116J.15*

FUEL OIL EMERGENCY MEASURES

4120.4100 DECLARATION AND SELECTION OF MEASURES.

Upon declaration of an energy supply emergency for petroleum, the governor shall select from the following measures in parts 4120.4200 to 4120.4400 to reduce the shortage of fuel oil.

Statutory Authority: *MS s 116J.15*

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PETROLEUM SUPPLY EMERGENCIES 4120.4300

4120.4200 VOLUNTARY MEASURES.

Subpart 1. **Homeowners and renters.** Homeowners and renters shall be requested to turn their thermostats back to between 62 degrees Fahrenheit and 66 degrees Fahrenheit during the day and 60 degrees Fahrenheit and 58 degrees Fahrenheit during the night and unoccupied hours, and shall be requested to set back water heater thermostats to between 105 degrees Fahrenheit and 115 degrees Fahrenheit (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one.

Subp. 2. **Conservation targets.** Voluntary industrial, commercial, government, and residential conservation targets shall be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

Subp. 3. **Reducing hours.** Commercial and industrial establishments shall be requested to reduce their hours of operations where this action saves energy.

Subp. 4. **Releasing fuel oil.** Commercial and industrial users shall be requested to release fuel oil from inventory supplies. The procedures for state set-aside allocation adopted according to Minnesota Statutes, section 116J.16 will be used to allocate voluntarily released inventory. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in part 4120.3100, subpart 2.

Subp. 5. **Closing buildings.** Business, industrial, and government institutions shall be requested to close nonessential buildings.

Subp. 6. **Public information.** Public information efforts shall be used to instruct Minnesotans in fuel oil, natural gas and electricity saving measures. Regular information updates regarding the status and severity of the shortage shall be issued.

Statutory Authority: *MS s 116J.15*

4120.4300 MANDATORY MEASURES.

Subpart 1. **Compliance with federal regulations.** Commercial buildings shall be ordered to comply with the standards that were set in the Emergency Building Temperature Restrictions (EBTR), Code of Federal Regulations 1979, title 10, part 490. Buildings which were exempted under EBTR are exempted from this part.

Subp. 2. **No smoking; reduced ventilation.** Smoking within buildings shall be prohibited and reduction of the amount of outside air entering the building ventilation systems may be ordered.

Subp. 3. **Electric utilities measures.** Electric utilities with oil-fired generating facilities which are members of the mid-continent area power pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the pool when power from nonpetroleum-fired generating facilities is available from the pool.

Subp. 4. **Slowed deliveries of fuel oil.** Fuel oil suppliers shall be ordered to stop deliveries to large users (1,000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

Subp. 5. **Conversion to residual oil.** Business, industrial, and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Minnesota Pollution Control Agency or other agency. Each firm or institution required to convert to residual oil shall be notified at least ten days prior to the effective date of the measure of the state's intent to implement this

measure.

Statutory Authority: *MS s 116J.15*

4120.4400 MEASURES FOR SEVERE SHORTAGES.

When the department determines that actions listed in parts 4120.4200 and 4120.4300 have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the governor:

A. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62 degrees Fahrenheit during the day where such action does not violate part 5205.0110, subpart 3 of the Department of Labor and Industry, and 50 degrees Fahrenheit at night or during unoccupied periods.

B. Emergency rules shall be ordered adopted or rules may be ordered suspended to relax environmental standards, where such action would yield significant fuel oil savings.

C. Delivery of fuel oil supplies to specific industrial sectors, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing signed by the division director, and shall be delivered by registered mail to firms in the industrial sectors and area suppliers at least ten days prior to the effective date of the measure.

(1) Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption Btu's per year per employee. The industrial sector with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

(2) First priority uses under part 4120.3100, subpart 2 will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

(3) A firm within an industrial sector may be exempted from curtailment of fuel oil deliveries if it can demonstrate that its energy-labor ratio is significantly below the industry average of the industrial sector because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to parts 4120.2100 to 4120.2400.

(4) A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8,400. The 30-year average of degree days shall be used.

(5) The order of curtailment and energy-labor ratios for industrial sector groupings and associated standard industrial classification codes will be compiled by the department and published biennially in the State Register during the month of October.

D. Homeowners and renters may be requested to close homes and move in with friends, relatives, or into emergency shelters. The emergency operating center shall assist in this effort by designating shelters, aiding in securing homes, and providing emergency transportation.

E. Actions available for implementation under parts 4120.4200 and 4120.4300 will remain available under this part.

Statutory Authority: *MS s 116J.15*

History: *L 1984 c 640 s 32*

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4120.5000 SELECTION OF MOTOR EMERGENCY MEASURES.

Upon declaration of an energy supply emergency based upon a petroleum shortage, the governor shall select from the following measures to reduce a motor fuel shortage.

Statutory Authority: *MS s 116J.15*

MOTOR FUEL EMERGENCY MEASURES

4120.5100 PUBLIC INFORMATION MEASURE.

Subpart 1. **Purpose.** This measure is intended to conserve motor fuel through voluntary public conservation in response to a declared energy emergency, and through broad public application of vehicle efficiency improvements and ridesharing promoted through public service announcements, conservation demonstrations, and dissemination of energy-related literature.

Subp. 2. **News releases.** The emergency operating center shall prepare and issue news releases to news media throughout the state containing at least the following:

- A. the specific cause or causes of the gasoline or petroleum shortage;
- B. estimates by the department of the shortfall of supplies expected for Minnesota;
- C. estimates by the department of the probable duration of the energy emergency; and
- D. a list of specific actions taken and measures imposed to reduce shortage.

Subp. 3. **Diesel-powered automobiles.** Owners and operators of diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel oil shortages.

Subp. 4. **Literature.** The emergency operating center shall make available to large worksites, schools, and local energy coordinators, literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

Subp. 5. **Public service announcements.** The emergency operating center shall provide public service announcements to the media which emphasize the importance of individual and corporate efforts in conserving motor fuel and provide specific conservation tips.

Statutory Authority: *MS s 116J.15*

4120.5200 EMPLOYER-BASED MOTOR FUEL CONSERVATION MEASURE.

Subpart 1. **Purpose.** The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency. The department shall inform affected employers before May 25, 1983, of the requirements for participating in the employer-based conservation measure. The governor may not implement this measure before May 25, 1983.

Subp. 2. **Scope.** The following employers are required to comply with the provisions of this measure:

- A. employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week;
- B. all educational institutions at the postsecondary school level with a total combined student-faculty commuting population of 200 or more persons, including colleges, universities, and vocational schools; and
- C. state, county, and municipal governments who have employment sites where 50 or more persons are employed.

Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation

activity which reduces employee commuting and business-related motor fuel consumption.

Subp. 3. **Technical assistance.** Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the department upon request.

Subp. 4. **Employer plans.** Employer plans may be submitted to the department for each applicable site or in conjunction with a business consortium, community, local, municipal, or county-wide plan, so long as each employer subject to this part identifies the conservation strategies adopted for each work site and the program elements listed under subpart 9.

Employers may choose to submit energy conservation plans to the department before the declaration of an energy emergency in the form and manner provided in subpart 5 or 6.

Subp. 5. **Employer emergency motor fuel conservation plan.** Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during an energy supply emergency. The employer may choose conservation strategies which achieve the required reduction.

Employer plans must contain conservation strategies which taken together would reduce an employer's baseline consumption by 15 percent.

Employers submitting self-styled emergency motor fuel conservation plans shall include a calculation of their baseline consumption as defined in part 4120.0100, the expected motor fuel savings attributed to the selected strategies, and the plan elements described in subpart 9.

Employers will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing fuel savings.

The assistant commissioner may decline to certify an employer plan submitted under this paragraph which fails to empirically support the level of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in subpart 6.

Subp. 6. **Employer motor fuel reduction strategies.** Employers shall select at least four strategies from the categories I and II, but in no case less than one from category I.

Subp. 7. **Category I.** Category I strategies:

A. Establish a carpool program for employees. An employer rideshare program may be independently-sponsored or provided in conjunction with a local or community ridesharing program. A rideshare program must minimally provide for: promotion of ridesharing through company bulletins, advertisements, and policies; the capability to match employees to carpools through rideboards, computer listings, or other methods which provide information necessary to match rideshare applicants; and a rideshare coordinator who will be responsible for the sponsored program.

B. Sponsor an employee vanpool program. An employer may purchase, rent, lease, or otherwise provide employees with vans for commuting to and from work. The employer may demonstrate an equivalent level of employee participation in an independent or employee-owned vanpool, but in any case shall maintain a participation rate of at least seven percent of total employment to qualify as providing a vanpool program.

C. Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of vehicles with a minimum carrying capacity of 20 passengers, a participation rate of 50 percent of employees who live within a three mile radius of the work site, or the equivalent number, and at least one commuter check point at least five miles from the work site.

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Employer-sponsored rideshare programs which fulfill the requirements of subpart 7 will be certified by the department. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in part 4120.5600 and will be exempt from the odd-even purchase restriction described in part 4120.5400.

Subp. 8. Category II. Category II strategies:

A. Adopt and enforce a parking management strategy which provides for preferential parking for high-occupancy vehicles in employer parking lots or subsidizes at least 20 percent of the cost of contract parking in independently operated parking facilities for employee carpools, or both.

B. Prohibit the use of company-owned vehicles for single-occupancy commuting and adopt a policy of using company vehicles for employee carpools.

C. Purchase an electric or electric-hybrid vehicle.

D. Promote transit use by employees through direct sale of transit passes at the work site, fare subsidies, or display of direct and connecting routes serving the work site.

E. Provide facilities which promote employee commuting by bicycle or moped. These facilities might include indoor or sheltered bicycle parking, high security bicycle parking, showers and dressing areas for bikers.

F. Participate with a rideshare agency to provide jitney service to persons requesting travel to a destination on or near the route taken for business purposes. An employer-owner or employee-owned vehicle used for business purposes may be used for the jitney service.

G. Institute flexible or staggered work hours.

H. Participate in an independently-sponsored truck and bus fuel economy project which offers both energy-conscious-driver education and instruction on fuel-economizing vehicle maintenance and accessories. Employers choosing this strategy must maintain a fleet of at least ten vehicles used for cargo and freight hauling.

Subp. 9. Content of conservation plan. An employer submitting an emergency motor fuel conservation plan according to subpart 5 or 6 shall identify in its plan the following:

A. the carpool, vanpool, or subscription bus program sponsored or subscribed to, and an estimate of the number of employees currently using and expected to use such services;

B. title of the person or persons responsible for supervising each plan component;

C. the internal media to be used to inform employees of the employer's program;

D. the administrative assistance and inhouse resources that the employer will provide for employee ridesharing services;

E. the schedule for implementing chosen strategies; and

F. the personnel (by title or position) that will perform essential plant protection for the firm during a driving ban.

Subp. 10. Employers actions upon governor's order. Employers shall institute all strategies contained in an approved employer conservation plan when the governor orders the employer-based motor fuel conservation measure.

Subp. 11. Employers without conservation plan. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an energy supply emergency for motor fuel shall:

A. submit to the department within 15 days after declaration of an energy supply emergency for motor fuel a plan to reduce baseline consumption by at least 15 percent over a period of three months or longer; or

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B. institute a compressed work week pursuant to an executive order of the governor that designates the weekday on which employers not qualifying under subpart 5, 6, or 11, item A, shall not perform or have an employee perform any activity related to the business except where:

(1) business- or employment-related activity can be performed at an employer's or employee's place of residence;

(2) activities required in certain industrial processes must operate continuously to prevent long-term or irreparable damage to a system or process; and

(3) plant protection requires a minimum level of attention or surveillance.

C. the following businesses or governmental activities shall be exempt from a compressed work week regardless of subpart 11:

(1) public or private services essential to public health and safety such as health and residential care facilities, medical facilities, law enforcement activities, and emergency services;

(2) agriculture;

(3) energy production;

(4) telecommunications; and

(5) sanitation services.

Subp. 12. **Public announcement.** The emergency operating center shall publicly announce the implementation of the employer-based conservation measure at least ten days prior to the effective date of the measure.

Statutory Authority: *MS s 116J.15*

4120.5300 SCHOOL CONSERVATION MEASURE.

Subpart 1. **Purpose.** The purpose of this measure is to conserve motor fuel by requesting schools to adopt strategies to reduce student commuting and school-sponsored activities in an energy supply emergency.

Subp. 2. **Scope.** Each school district, as defined by the education code, Minnesota Statutes, chapters 120 to 129, and nonpublic schools, as defined in Minnesota Statutes, section 123.932, subdivision 3, which have a combined student-staff population of 100 persons or more, is requested to comply with this measure.

Subp. 3. **Submission of conservation plan.** School boards are requested to voluntarily submit to the department before April 1, 1984, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in subpart 4 or 5.

Subp. 4. **School emergency conservation plan: option A.** School districts may submit a self-styled conservation plan including any conservation strategies that taken together would have an objective of reducing baseline consumption by approximately 15 percent during an energy supply emergency.

Self-styled conservation plans are requested to include:

A. a calculation of the baseline consumption, defined in part 4120.0100, subpart 4;

B. the expected motor fuel savings attributed to each selected strategy; and

C. the plan elements described in subpart 6.

School districts will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing motor fuel savings.

Subp. 5. **School emergency conservation plan: option B reduction strategies.** Option B reduction strategies:

A. School districts are requested to select at least three strategies from the following categories, with at least one strategy being from category I.

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B. Category I strategies consist of:

(1) Prohibiting student parking on school grounds and requesting local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who: have no alternative transportation to school, have special medical needs that prevent use of alternative methods of traveling to school, have job requirements that demand access to automobile transportation, or are members of a carpool registered with the school rideshare coordinator.

(2) Postponement or cancellation of extracurricular activities, including athletic events, until the termination of an energy supply emergency for motor fuel.

(3) Cancellation of two school days for each 30-day declared energy emergency period.

C. Category II strategies consist of:

(1) Establishment or sponsorship of a student/staff rideshare program. A student/staff rideshare program may be organized independently or in conjunction with a local or community rideshare program. It is recommended that a rideshare program provide for: promotion of ridesharing through school policies and newspapers or other publications, the capability to match students or staff carpools through rideboards, manual or computer listings, or other methods which provide information necessary to match rideshare applicants, and a school rideshare coordinator who will be responsible for the school ridesharing program.

(2) Adoption and enforcement of a parking management strategy which gives preferential parking to high-occupancy vehicles in student parking lots or requires fees for parking on school grounds.

(3) Provision of indoor or sheltered bicycle parking with a capacity for at least five percent of the student body.

(4) Elimination of on-the-road driver education for the period of the emergency.

(5) Cancellation or rescheduling of some extracurricular activities. Selection of this strategy is not encouraged if category I, strategy (2) has been chosen and applies when the governor orders the school conservation measure.

(6) Participation in an independently-sponsored school bus fuel economy program.

Subp. 6. Contents of school district conservation plans. Emergency motor fuel conservation plans submitted by school districts are requested to include:

A. the title of the person or position responsible for implementing the plan during an energy supply emergency for motor fuel;

B. the internal media to be used to inform school staff and students of a school district program measure; and

C. the implementation schedule for category II, strategies (1), (2), (3), and (6).

Statutory Authority: *MS s 116J.15*

4120.5400 ODD-EVEN PURCHASE REQUIREMENT MEASURE.

Subpart 1. Purpose. The purpose of the odd-even purchase requirement is to conserve motor fuel and facilitate the orderly purchase of motor fuel by alternating the days of purchase eligibility.

Subp. 2. Scope. Retail sales and purchases of motor fuel shall be restricted to even-numbered days of the month for persons in possession of vehicles whose license plate numbers end in one of the even digits 0, 2, 4, 6, 8; and to odd-numbered days of the month for persons in possession of vehicles whose license plate numbers end in the odd digits 1, 3, 5, 7, and 9.

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Specialty and personalized license plates which display no ending numeral are deemed to be "odd" for purposes of the purchase requirement.

The restrictions in this part shall not apply on the 31st day of any month or on the 29th day of February in a leap year.

Subp. 3. **Exemptions.** The following vehicles shall be exempt from the odd-even purchase requirement (motor fuel may be purchased for them on any day of the week):

A. Vehicles being driven for any first priority use defined in part 4120.3200. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

B. Ridesharing vehicles identified by employers with state certified conservation plans, as described in subpart 7.

C. Commercial vehicles, as defined in part 4120.0100, subpart 9.

D. Vehicles operated by a handicapped person and displaying a handicapped license plate or other special identification.

E. Vehicles with out-of-state license plates.

F. Motorcycles and mopeds.

G. Vehicles not licensed for highway use.

H. Vehicles held for sale by a licensed motor vehicle dealer in the ordinary course of business.

I. Vehicles being operated by individuals under emergency circumstances which in the judgment of the retailer demand an exception. If such an exception is granted by the retailer, the license number and signature of the person granted the exception shall be obtained.

Statutory Authority: *MS s 116J.15*

4120.5500 MINIMUM PURCHASE REQUIREMENT MEASURE.

Subpart 1. **Purpose.** The purpose of this measure is to decrease vehicle lines at motor fuel retail outlets by reducing the frequency of fillups.

Subp. 2. **Measure requirements.** Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless the amount transacted and dispersed is at least five gallons. In the event the quantity purchased is less than the five-gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five-gallon minimum.

In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into a container, other than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

Subp. 3. **Display of notice.** A person selling motor fuel in transactions to which provisions of this part apply shall display at the point of sale notice of such provisions.

Subp. 4. **Compliance required.** Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this part.

Subp. 5. **Exemptions.** The following users are not required to purchase a minimum amount:

A. Vehicles being driven for first priority uses, as defined in part 4120.3200. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

B. Motorcycles and mopeds and similar three-wheeled vehicles.

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C. Out-of-state licensed vehicles.

D. Vehicles held for sale or lease by licensed motor vehicle dealers in the ordinary course of business.

E. Vehicles being operated by individuals under emergency circumstances which in the judgment of the retailer demand an exception. If such an exception is granted by the retailer the license number and signature of the person granted the exception shall be obtained.

Statutory Authority: *MS s 116J.15*

4120.5600 FLAG REQUIREMENT FOR MOTOR FUEL RETAILERS.

Subpart 1. **Purpose.** The purposes of this measure are to signal to motorists availability of motor fuel for purchase at stations through the display of flags and to permit retailers to limit sales to priority users only.

Subp. 2. **Requirement.** Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below:

A. A green flag indicates that motor fuel is available to the public subject to the purchase restrictions imposed by these parts. A station flying a green flag cannot show preference to any customer, except that emergency vehicles may be allowed to move to the front of an existing line to be fueled.

B. A yellow flag indicates that motor fuel is available only to first priority vehicles, as defined in part 4120.3200, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in part 4120.5200. A station flying a yellow flag shall not show preference in the sale of motor fuel to any priority vehicle.

C. A red flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in part 4120.0100, subpart 19.

Subp. 3. **Description of flag; location.** Flags shall be square and at least two feet by two feet but no greater than three feet by three feet in size. They shall be made of cloth or plastic. Flags shall be located on the boulevard or near enough to the street to allow visibility of at least 100 yards in each direction of the station.

Statutory Authority: *MS s 116J.15*

4120.5700 MOTOR FUEL AVAILABILITY MEASURE.

Subpart 1. **Purpose.** The purpose of this measure is to assure that motor fuel is available for purchase at key locations throughout the state 24 hours a day and that these locations and their hours of operation are locally publicized.

Subp. 2. **Set-aside product assignment.** Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by Minnesota Statutes, section 116J.16.

Subp. 3. **Publicity.** The emergency operating center shall publicize the location of the stations participating in the availability program in local newspapers. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Economic Development Division's Tourist Information Center, both of which provide motor fuel availability information.

Statutory Authority: *MS s 116J.15*

4120.5800 STRICT ENFORCEMENT OF POSTED HIGHWAY SPEED LIMITS.

Subpart 1. **Purpose.** The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit on state highways.

Subp. 2. **Speed limit.** Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalties provided in part 4120.1500.

Subp. 3. **Governor's request.** The governor shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement through personnel assignments and increased road surveillance.

Statutory Authority: *MS s 116J.15*

SEVERE MOTOR FUEL EMERGENCY MEASURES**4120.6100 ORDERING.**

When the department determines that the measures listed in parts 4120.5100 to 4120.5800 have not eliminated or will not eliminate the shortage of motor fuel, the governor may order any of the following measures.

Statutory Authority: *MS s 116J.15*

4120.6200 VEHICLE PERMIT-STICKER MEASURE.

Subpart 1. **Purpose.** This measure is intended to conserve motor fuel by prohibiting the use of vehicles for one day per week.

Subp. 2. **Applicability.** Vehicle owners shall apply to the Department of Public Safety for a no-driving-day-designation permit-sticker. The applicant may select any day (Monday through Sunday) as the no-driving-day for his/her vehicle but must choose the same day for all vehicles owned. The owner must prominently display the sticker on each vehicle owned and driven during the term of this measure.

A vehicle rented or leased for a period exceeding seven days shall be considered owned by the lessee for purposes of this measure.

Upon the effective date of the vehicle permit-sticker requirement, all Minnesota-licensed motor vehicles subject to the requirement must display a permit-sticker in the lower right-hand corner of the front windshield.

Subp. 3. **Exemptions.** The following are exempt from provisions of this part:

- A. vehicles being driven for any first priority use defined in part 4120.3200;
- B. vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;
- C. motorcycles and mopeds;
- D. short-term rental vehicles; and
- E. such other vehicles as the governor may determine.

Subp. 4. **Sticker.** Vehicle owners operating a motor vehicle under one of the qualifying exemptions listed in subpart 3 must apply to the Division of Driver and Vehicle Services (DDVS) of the Department of Public Safety for an exempt sticker. Exempt stickers issued by the DDVS must be prominently displayed on the vehicle for which the exempt permit was issued.

Subp. 5. **Rental agencies.** Vehicle rental agencies must apply for exempt stickers for vehicles rented for periods less than one week. Upon approval of a rental agency's application, DDVS will exempt stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven days must be registered by the lessee.

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Subp. 6. **Waivers.** The governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under subpart 3.

Statutory Authority: *MS s 116J.15*

4120.6300 SPEED LIMIT REDUCTION MEASURE.

Subpart 1. **Purpose.** This measure is intended to conserve motor fuel by reducing the maximum speed limit on all highways in Minnesota.

Subp. 2. **Lower speed limit.** The governor upon the advice of the department shall order the commissioner of transportation to set a lower speed limit on all highways in Minnesota. The commissioner of transportation shall lower the speed limit during an energy supply emergency pursuant to Minnesota Statutes, section 169.141.

Subp. 3. **Violations.** Violation of the maximum limit during an energy supply emergency for motor fuel shall carry the additional penalties as provided in part 4120.1500.

Subp. 4. **Governor's request.** The governor may request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through personnel assignments and increased road surveillance efforts.

Statutory Authority: *MS s 116J.15*

4120.6400 DRIVING BAN MEASURE.

Subpart 1. **Purpose.** This measure is intended to conserve motor fuel by prohibiting the use and operation of all nonexempt motor vehicles for a specified 24-hour period.

Subp. 2. **Ordering.** Upon the department's determination that a 24-hour driving ban is necessary to reduce the demand for motor fuel, the governor may order an emergency driving ban. Upon the governor's order, the division director shall issue the order and a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall state the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five days prior to the imposition of the driving ban.

Subp. 3. **Unlawful public road use.** It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of driving ban.

Subp. 4. **Exemptions.** The following motor vehicle uses shall be exempt from a driving ban:

- A. emergency vehicles;
- B. sanitation services vehicles;
- C. aviation ground support vehicles;
- D. vehicles identified as required in part 4120.5300, subpart 7, item F and used by employees in commuting for the purposes of plant protection;
- E. vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;
- F. individuals who require daily medical treatment; and
- G. out-of-state licensed vehicles.

Subp. 5. **Sticker or card.** Any vehicle registered and licensed by the state of Minnesota and operated during a driving ban shall prominently display a sticker or card that clearly identifies that vehicle as exempt. The governor may waive this requirement for any category of exempted user, for example, police, fire, ambulance, or aviation ground support vehicles.

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Subp. 6. **Guidelines.** The department will issue guidelines for identification of exempt vehicles prior to a driving ban.

Statutory Authority: *MS s 116J.15*