

CHAPTER 4  
PERMANENT ASSIGNMENT OF PETROLEUM PRODUCTS

[Prior to 3/11/87, see Energy Policy Council[380] Ch 4]

**565—4.1(473) Scope.** This chapter establishes department procedures for recommending supplies of an allocated product for permanent assignment to new end-users (bulk purchasers) to the Department of Energy under 10 CFR Section 205, subpart Q.

**565—4.2(473) Applicant limitations.**

**4.2(1)** A new end-user may not purchase or obtain more than 20,000 gallons for agricultural production per year of an allocated product.

**4.2(2)** A new end-user may not purchase or obtain more than 50,000 gallons for multifamily residences per year of an allocated product.

**4.2(3)** All other new end-user purchasers may not purchase or obtain more than 84,000 gallons per year of an allocated product.

**565—4.3(473) What to file—contents.** The party shall file the appropriate department of energy form. If the form is not available, the application shall consist of the following information:

The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the department action sought. The facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the director upon request. When the application pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information pertaining to the entire transaction shall be submitted. In addition to such information, the applicant shall include the following information:

1. Description of applicant's business;
2. The anticipated use of the allocated product in applicant's operation, including present and anticipated needs of priority customers, if applicable;
3. An estimate of the anticipated effect that denial of the requested assignment would have on the applicant's operation;
4. A description of the extent to which the applicant has investigated the possibilities of converting to an alternative fuel or product, and the applicant's conclusion as to the feasibility of making such conversion;
5. A description of the applicant's efforts to find other suppliers;
6. The identification of any previous assignment order relevant to the present application that has been issued to the applicant or to any person that controls or is controlled by the applicant;
7. A statement as to whether the applicant had no supplier during the requisite base period, or as to whether the applicant's base period supplier or new supplier is unable to supply the requirements.

**565—4.4(473) Where to file.** All applications for assignment for delivery within the state of Iowa shall be filed with the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034; Attention Energy Bureau.

**565—4.5(473) Notice.**

**4.5(1)** The director shall serve notice on any person readily identifiable by the director as one who will be aggrieved by the director's action and may serve notice on any other person that written comments regarding the application for assignment will be accepted if filed within ten days of service of the

notice; or may determine that notice should be published in a newspaper of general circulation in the county of the principal place of business of the applicant.

**4.5(2)** Any person submitting written comments to the director with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with 10 CFR Section 205.9(f), to the applicant. The person shall certify to the department that it has complied with the requirements of this paragraph. The director may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

**565—4.6(473) Evaluation of assignment.**

**4.6(1) Processing.** The director may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The director may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third party submissions and the names of such third parties are revealed. In evaluating an application, the director may consider any other source of information. The director may convene a conference, if a conference will advance evaluation of the application.

**4.6(2) Dismissal of applications.** If the director determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the director may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the director may dismiss the application with prejudice.

**4.6(3) Criteria.**

*a.* The director shall consider among other relevant criteria, the quantity of allocated product previously sold or purchased at the end-user's site, the projected volume as calculated prior to construction at the end-user's site and the volume sold or purchased by other similar end-users operating in circumstances similar to the applicant's.

*b.* To be recommended for approval by the director, an application must conform to the petroleum set-aside subrule 3.13(2), criteria for assignment from state set-aside.

**4.6(4) Recommendations to the Department of Energy.**

*a.* The director shall recommend in writing to the DOE those applications for assignment, other than applications for assignment from the set-aside system, that warrant the issuance of an assignment order in accordance with this chapter, stating therein the reasons for the recommendation. The director may recommend that the application be approved as filed or with modification. Included with such recommendation shall be copies of all documents relevant to the proceeding, including the application.

*b.* Upon consideration of the recommendation and other relevant information received or obtained during the proceeding, the Department of Energy will enter an appropriate order.

This rule is intended to implement Iowa Code section 473.7(10).

**565—4.7(473) Decision and order.**

**4.7(1) Assignment.** Upon consideration of an application and other relevant information received or obtained during the proceeding, the director may recommend to the Department of Energy that such application be approved either as filed or with modification, or, as provided in 10 CFR Section 211, may deny the application in whole or in part.

**4.7(2)** The order denying an application for assignment shall include a brief written statement summarizing the factual and legal basis upon which it was issued. The order shall provide that any person aggrieved thereby may file an appeal with the director in accordance with rule 4.9(473).

**4.7(3)** The director shall serve a copy of the order upon the applicant and any other person who participated in the proceeding or who is readily identifiable by the director as a person who is aggrieved by the order.

**565—4.8(473) Timeliness—assignment.** If the director fails to take action on any application filed under this chapter within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this chapter.

**565—4.9(473) Appeals.** All appeals concerning director recommendations to the Department of Energy for assignments to new end-users shall be in accordance with 565—Chapter 3, subpart C, of these rules with the following exceptions:

1. Any person who files an appeal will have 30 days in which to file it;
2. Any person who may be adversely affected by the notice of appeal may file a response within 15 days of the mailing of the notice.

**565—4.10(473) Request for confidential treatment.** A request for confidential treatment of a document filed with the director by any person shall be in accordance with rule 561—2.4(22,455B,473).

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