

CHAPTER 3
STATE PETROLEUM SET-ASIDE
[Prior to 3/11/87, see Energy Policy Council[380] Ch 3]

SUBPART A—SET-ASIDE SYSTEM

565—3.1(473) General. The petroleum set-aside program is established to offer an opportunity to lessen emergency and hardship due to shortages or imbalances in the distribution of propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). Although the purpose of the petroleum set-aside is to alleviate emergency and hardship of petroleum consumers and end-users, the principal method for doing so is by releasing petroleum products to wholesalers who in turn release this petroleum product through normal distribution lines to those consumers or end-users in need. These rules are adopted by the department to utilize the prescribed set-aside percentage for each class of petroleum product. The percentage to be set aside, which is determined by the department, and the total petroleum product within each class estimated to enter the state each month will determine the total volume of the state set-aside.

565—3.2(473) Scope. The rules in this chapter apply only to release of the state set-aside and assignment of the state set-aside and do not govern department recommendations for allocation of new users.

565—3.3(473) Authorizing document. The director shall issue to an applicant granted an assignment a document authorizing such assignment. A copy of the authorizing document (or order) shall also be provided to the designated state representative of the prime supplier assigned to the applicant. An authorizing document issued by the director pursuant to this rule is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month. An authorizing document not presented to either the prime supplier or a designated local distributor of the prime supplier within ten days of issuance shall expire after that time.

565—3.4(473) Supplier's responsibilities. Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as nonprime suppliers, honor such authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime supplier. Any nonprime supplier which provides an allocated product pursuant to an authorizing document shall in turn receive from its supplier an equivalent volume of the allocated product which shall not be considered part of its allocation entitlement otherwise authorized.

565—3.5(473) Prime suppliers. All prime suppliers shall supply products from their state set-aside volume each month, as directed by the department, not to exceed the total state set-aside volume for each product for that month. That portion of a prime supplier's state set-aside volume for a particular month which is not allocated by the department during that month or which is not subject to an authorizing document issued no later than the last day of that month shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the federal allocation procedures.

565—3.6(473) Release of state set-aside.

3.6(1) At any time during the month, the department may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the state.

3.6(2) From time to time, the department may designate certain geographical areas within the state as suffering from an intrastate supply imbalance. At any time during the month, the state office may order some or all of the prime suppliers with purchasers within such geographical areas to release part

or all of their set-aside volume through their normal distribution systems to increase the allocations of all of the supplier's purchasers located within such areas.

3.6(3) Orders issued pursuant to this paragraph shall be in writing and effective immediately upon presentation to the prime supplier's designated state representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

SUBPART B—APPLICATIONS FOR ASSIGNMENTS FROM STATE SET-ASIDE SYSTEM

565—3.7(473) Scope and purpose. The state set-aside system is established for propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). The state set-aside shall be utilized by the department to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users within the state from the state set-aside volumes, including wholesale purchaser-consumers and end-users which are part of any governmental organization. To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the department may direct that a wholesale purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing the hardship or emergency.

565—3.8(473) Assignment from state set-aside. If the department approved a hardship or emergency application, it shall assign a prime supplier and an amount from the state set-aside to the applicant. To determine an appropriate prime supplier, the department may coordinate the assignment with the state representatives of the prime suppliers.

565—3.9(473) Who may apply. A wholesale purchaser-consumer or an end-user, seeking an assignment from the state set-aside system to meet a hardship or emergency requirement, and a wholesale purchaser-reseller, seeking an assignment to enable the purchaser-reseller to supply the wholesale purchaser-consumers and end-users, may apply for an assignment under the state set-aside system.

565—3.10(473) Where to file. All applications shall be filed with, or verbal requests made to, the director if the product will be physically delivered and the applicant is located in the state of Iowa.

565—3.11(473) What to file.

3.11(1) Application for assignment from the state set-aside system may be by the appropriate form, by other written communication or by verbal, including telephonic, request.

3.11(2) Every application, whether written or verbal, shall provide sufficient information to enable the director to determine that the proposed allocation satisfies the criteria for assignment contained in rule 3.13(473) and shall include all of the information required by subrule 3.11(3) of this rule.

3.11(3) Wherever possible, applicants should submit a completed copy of the form entitled "Application for Set-Aside Fuel." Copies of this form may be obtained from the administrative support station, energy and geological resources division. Any request, whether by form or otherwise, must include the following information:

- a. Applicant's name and address.
- b. Telephone number.
- c. Nature of the application.
- d. Product required.
- e. Applicant's past and current supply situation.
- f. Supplier's(s') name and address.
- g. Explanation of product end uses.
- h. The identification of any previous assignment order from the state set-aside system that was issued to the applicant or to any person that controls or is controlled by the applicant.

i. A statement that an energy conservation program is in effect. Such program may include reducing operating hours, establishing minimum purchase requirements, increased energy efficiencies in buildings and vehicles, and reducing nonessential energy usage.

j. A statement that the applicant's base period supplier or new supplier is unable to supply the applicant's requirements or, if the applicant does not have a supplier, a statement that the applicant has contacted two suppliers that could supply the allocated product and the identification of those suppliers.

k. If the applicant is a wholesale purchaser-reseller, the application shall contain a description of the wholesale purchaser-consumers and end-users that will be supplied and their hardship and emergency requirements.

l. Justification for hardship.

m. Applicant's dated, certifying signature.

3.11(4) With respect to verbal applications, the director shall determine first whether the claimed hardship is of such an emergency character that prior written application is impracticable. If so, the director shall obtain all required information of the applicant and may act thereon or may seek such verification as is possible and appropriate in the judgment of the director, given the circumstances of the applicant. Any verbal request must be immediately verified by the applicant in writing, which writing shall contain all of the information required by these rules. Failure to submit written verification shall result in denial of the application, rescission of an order of assignment, or other relief as the director deems appropriate.

If the director determines that the claimed hardship is not of such an emergency character that action upon verbal request is appropriate, the applicant shall submit a written application as provided in these rules.

565—3.12(473) Processing applications.

3.12(1) All applications shall be processed by the director in accordance with these rules.

3.12(2) The director may initiate an investigation of any statement, whether written or verbal, and utilize in its evaluation any relevant facts obtained by 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-person submissions. In evaluating an application, the director may consider any other source of information. The director may convene a conference if the director considers that a conference will advance evaluation of the application.

3.12(3) 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.

3.12(4) The director may notify any person that it determines will be aggrieved by the assignment that comments regarding the application will be accepted.

565—3.13(473) Criteria for assignment from state set-aside.

3.13(1) *Hardship or emergency requirements.* There shall be assignments only to wholesale purchaser-consumers and end-users located within the state who demonstrate hardship or emergency requirements (or to wholesale purchaser-resellers to enable them to supply such persons) with respect to propane, middle distillate, motor gasoline and residual fuel oil (except that used by utilities or as bunker fuel for maritime shipping).

A hardship is a situation involving or potentially involving substantial discomfort or danger or economic dislocation caused by a shortage of an allocated petroleum product or both. An emergency is a hardship involving the absence of a petroleum product supply for a wholesale purchaser-consumer or an end-user which requires immediate attention.

3.13(2) *Assignment priorities.* To the extent that the state can determine the order of priority, assignments from the state set-aside to applicants demonstrating emergency or hardship requirements shall generally conform to the following rank order of assignment.

- a. Protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;
- b. Maintenance of essential public services (including facilities and services provided by municipally, cooperatively, or investor-owned utilities, or by any state or local government or authority, and including transportation facilities and services which serve the public at large);
- c. Maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;
- d. Preservation of an economically sound and competitive petroleum industry, including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;
- e. Allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of:
 1. Fuels, and
 2. Minerals essential to the requirements of the United States, and for required transportation related thereto;
- f. Economic efficiency; and
- g. Minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

3.13(3) *Assignment of set-aside volume.* A prime supplier's set-aside volume shall, to the extent possible, be uniformly assigned during the month so as to enable the director to meet the emergency and hardship priority needs of the state throughout the month.

3.13(4) *Report of projected distribution.* The department shall review monthly the projected degree to which there are emergency and hardship requirements of end-users in the various categories and may provide for differing assignments among priority categories in the state set-aside for that month. The department will assess the gravity of need of end-users in the various categories and may provide for differing assignment among priority categories on a monthly basis as deemed to be in the public interest. The director shall take appropriate steps to make monthly allocation projections and priorities available to the public. The department shall also review the extent to which the emergency and hardship requirements were met in the previous month.

565—3.14(473) Decision and order.

3.14(1) *Order.* Upon consideration of the application whether written or verbal, and other relevant information received or obtained during the proceeding, the director shall issue an order denying or granting the application.

An order granting an application for assignment from the state set-aside shall be the "authorizing document" for purposes of rule 3.3(473).

3.14(2) *Contents.* The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued. The order shall provide that any person aggrieved thereby may file an appeal with the department in accordance with these rules.

The order shall state that it is effective upon issuance and shall expire within ten days of its issuance unless the applicant presents the applicant's copy of the order to the prime supplier or a designated local representative of such prime supplier within those ten days.

3.14(3) *Service by director.* The director shall serve a copy of the order upon the applicant, the designated state representative of the prime supplier assigned to the applicant and any other person readily identifiable as one who will be aggrieved by said order.

3.14(4) *Denial of application.* The denial of an application shall be without prejudice to the right of the applicant to again request petroleum from the state set-aside.

565—3.15(473) Misuse of state set-aside. If the director has reason to believe that a recipient of state set-aside used the set-aside fuels for purposes other than those end-uses designated on the authorization

order and the application or if the director has reason to believe that the recipient has misrepresented any information on the application or authorization order, that recipient's eligibility for state set-aside may be rescinded. The director shall provide the recipient an opportunity to present evidence or arguments to the director. Should the director determine that misuse or misrepresentation has occurred and that the recipient should be ineligible for a reasonable period of time, the director shall give written, timely notice by personal service as in civil actions or by restricted certified mail to the recipient of the facts or conduct and any provision of law, including these rules, which warrant the action. Such notice shall advise the recipient of the opportunity to show, in an evidentiary hearing conducted pursuant to 567—Chapter 7 and these rules, that the facts or conduct relied upon by the director are not in fact true. The recipient may also alternatively request an oral argument or submission of briefs to the commission to dispute issues of law or policy. Any request for evidentiary hearing or argument shall be filed with the director within 15 days of service of the director's decision. Unless the commission finds that the public health, safety or welfare imperatively requires emergency action and makes a finding to that effect, the recipient shall not be denied eligibility during the pendency of the decision on the basis of misuse or misrepresentation. Such proceedings shall be promptly instituted and determined.

565—3.16(473) Time for action on application.

3.16(1) If the director fails to take action on an application, whether verbal or written, within ten days of filing (if the application is verbal, it shall be considered to be filed on the date that it is verbally communicated to the director), the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

3.16(2) Notwithstanding subrule 3.16(1) of this rule, the department may temporarily suspend the running of the ten-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the director serves upon the person notice that the additional information has been received and accepted or that the application has been properly filed, as appropriate. Unless otherwise provided in writing by the director, the ten-day period shall resume running on the first day that is not a Saturday, Sunday, or state legal holiday and that follows the day on which the department serves upon the person the notice described in this paragraph.

SUBPART C—APPEALS

565—3.17(473) Appeals. These rules establish the procedures for the filing of an administrative appeal of assignment and set-aside orders issued by the director. In all cases, efforts shall be made by the director and any aggrieved parties to informally confer and resolve issues prior to scheduling an appeal. These rules shall apply to all appeals of assignment and set-aside orders.

565—3.18(473) Review of appeal. Appeals taken from the decision of the director shall be presented, heard and decided by the commission in accordance with 567—Chapter 7 and this subpart C.

565—3.19(473) Filing of appeal. Any person aggrieved by an order issued by the director may file an appeal with the department in accordance with these rules. The appeal shall be filed within 15 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

565—3.20(473) Time of filing. The notice of appeal when filed in person shall be considered filed on the date delivered to the department. A notice of appeal when filed by mail shall be considered filed on the date postmarked.

565—3.21(473) Form of notice of appeal. All notices of appeal shall be in writing and signed by the appellant; shall designate clearly on its face that it is an appeal; shall contain a concise statement of the grounds for appeal and the requested relief; shall be accompanied by any documents or briefs, if any, which pertain to the appeal; shall be accompanied by the affidavit of mailing required in rule 3.22(473);

and shall state: “Any person adversely affected by the request for relief must file a response within ten days of the date this notice is mailed to ensure that their views will be considered by the set-aside board. See rule 3.22(473).” The appellant shall state whether a request for an informal settlement conference with the director or an evidentiary hearing regarding the appeal has been made.

565—3.22(473) Notice to affected third parties. The appellant shall file with the notice of appeal an affidavit certifying that the notice of appeal has been mailed to all persons readily identifiable as ones who would be aggrieved by the requested relief on appeal and shall include a list of the persons.

Upon receipt of the notice, the director shall notify any other third party readily identifiable as one who would be aggrieved.

565—3.23(473) Responses to notice of appeal. The director or any other person who may be adversely affected by the notice of appeal may file a response no later than ten days of the mailing of the notice served on the person and may raise any issue of law or fact which is relevant to the determination of the appeal.

565—3.24(473) Requests for evidentiary hearing. If the appellant or any other person requests an evidentiary hearing, the notice of appeal or response thereto shall state the issues of fact for the set-aside board to determine.

565—3.25(473) Resolution of appeal where no material issue of fact. If the commission determines that the appeal does not raise any issue of material fact, the appeal may be granted or denied upon the basis of the written notice of appeal and the requested documents. However, the commission may, on request or on its own motion, hold an oral argument where there is no material issue of fact, if it is determined that there is a substantial question of law or policy.

565—3.26(473) Scheduling of evidentiary hearing. If the commission determines that the appeal raises a material issue of fact, a request for an evidentiary hearing by the appellant or any other party shall be granted.

Upon granting of a request for an evidentiary hearing, the director shall schedule such hearing as soon as possible taking into account the convenience of the parties and the circumstances surrounding the appeal.

565—3.27(473) Notice of evidentiary hearing. Upon the scheduling of an evidentiary hearing on an appeal, the director shall mail a notice of hearing to the appellant and all third parties identifiable as being affected by resolution of the appeal at least ten days prior to the date of hearing, unless the parties agree in writing to waive this requirement.

The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement that the hearing is held pursuant to these rules and any other relevant legal authority;
3. A reference to the particular sections of any statutes and rules involved;
4. A short and plain statement of the matters to be considered at the hearing.

565—3.28 to 3.32 Rescinded, effective 4/15/87.

565—3.33(473) Review by commission. A proposed decision of the presiding officer becomes the final decision of the commission without further proceedings unless there is an appeal to the commission within seven days from the entry of the proposed decision or the commission on its own motion at the meeting following entry of the proposed decision, decides to review it.

On appeal, the commission may review and reverse the findings of fact if the commission determines that such findings are clearly erroneous, or involve errors of law, which were the basis for decision.

565—3.34(473) Remedy for erroneous denial for assignment or set-aside request. If it is determined that an assignment or set-aside request by a party to the appeal in a particular month was erroneously denied, the presiding officer or commission may order that the request be granted provided the appeal is resolved in time to allow allocation from the state set-aside volume during that month. If the appeal is not resolved in time to allow allocation, special consideration shall be given to future requests by such party for an assignment or set-aside order. Since there is a need for expeditious action in order to effectuate the purpose of the state petroleum set-aside program, an appeal of an assignment or set-aside order shall not operate to stay the order.

565—3.35(473) Inspection of appeal decisions. Copies of all appeal decisions of the department shall be kept on file for at least five years from the date of decision and open for inspection in the department office. The decisions and determinations shall be open to public inspection during normal business hours of any working day.

SUBPART D—REQUESTS FOR CONFIDENTIAL TREATMENT

565—3.36(473) Requests for confidential treatment. Any requests or determinations regarding confidential treatment of information filed for use in the operation of the petroleum set-aside program shall be made in accordance with 561—2.4(22,455B,473).

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