

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to

the Energy Agency
(Agency or Board)

Regulation No. EA 101-107

Subject: Fuel allocation Division - Rules of Procedure

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

AUG 27 1975 3:55 PM

BY Eda Staudenmaier
AUTH. SIGNATURE

Stamped and filed with the Secretary of State august 27, 1975

Rev. 9-72

MINNESOTA ENERGY AGENCY
FUEL ALLOCATION DIVISION
RULES OF PROCEDURE
EA 101 - EA 107

101 Introduction.

The Federal Mandatory Petroleum Allocation Regulations, 10 CFR § 205.1 et seq. provide for extensive involvement by State Government in the management of the Federal Petroleum Allocation Program.

In Minnesota, the Fuel Allocation Division of the Minnesota Energy Agency has been certified by the Federal Energy Agency as the state office with the responsibility for carrying out the administration of this program.

These rules represent the procedures of the Fuel Allocation Division with respect to state set-aside assignments, permanent assignments or adjustments to allocation entitlements and appeals from orders concerning those subjects.

102 Definitions.

For purposes of these rules, the following definitions shall apply:

(a) "Adjustment" means a recommendation by the Office to the Federal Energy Agency that an applicant's allocation entitlement for a petroleum product be permanently changed.

(b) "Board" means the Fuel Allocation Appeals Board.

(c) "Coordinator" means the head of the Fuel Allocation Division, who is authorized to sign orders and authorizing documents for state set-aside assignments, adjustments and permanent assignments on behalf of the Director.

(d) "County and/or Municipal Fuel Coordinator" means any person who has been appointed by his county board or city council to perform certain actions with regard to fuel allocation.

(e) "Current Requirements" means the supply of an allocated product needed by an end-user or wholesale purchaser to meet its present supply requirement for any single month.

(f) "Director" means the Director of the Minnesota Energy Agency.

(g) "End-User" means any person who is an ultimate consumer of an allocated product other than a wholesale purchaser-consumer.

(h) "Office" means the Fuel Allocation Division of the Minnesota Energy Agency.

(i) "Order" means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the Office concerning state set-aside assignments, adjustments or permanent assignments, or a written document issued by the Board deciding an appeal from an order of the Office. An order is effective on the date of its issuance. An order shall be deemed to be issued on the date on which it is signed by the Coordinator or Director.

(j) "Permanent Assignment" means a recommendation by the Office to the Federal Energy Agency that an applicant be assigned a permanent supplier and an allocation entitlement.

(k) "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution.

(l) "Prime Supplier" means the supplier or producer who makes the first sale of any allocated product subject to the state set-aside into the state distribution system for consumption within the state.

(m) "Purchaser" means a wholesale purchaser, an end-user, or both.

(n) "Service" means personal service or service by registered or certified United States mail, postage prepaid and addressed to the person at his last known address. Service upon a person's duly authorized representative shall constitute service upon that person. Service by registered or certified mail is complete upon mailing.

(o) "Set-Aside Assignment" means an order directing a prime supplier to make a product from its state set-aside available to a designated person.

(p) "State" means State of Minnesota.

(q) "State Set-Aside" means, with respect to a particular prime supplier, the amount of an allocated product which is made available from the total supply of a prime supplier pursuant to Federal regulations for utilization by the office to resolve emergencies and hardships due to fuel shortages. The state set-aside amount for a particular month and state is calculated by multiplying the state set-aside percentage level by the prime supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the state.

(r) "Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers, or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including but not limited to refiners, natural gas processing plant or fractionating plants, importers, resellers, jobbers and retailers.

(s) "Wholesale Purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer.

(t) "Wholesale Purchaser-Consumer" means any ultimate consumer which, as part of its normal business practices,

purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (i) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (2) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; (3) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.

(u) "Wholesale Purchaser-Reseller" means any person who purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.

103 State Set-Aside Assignments: Procedures.

(a) Who may file. A wholesale purchaser-consumer or an end-user, seeking an assignment to meet current requirements because of hardship or emergency, and a wholesale purchaser-reseller, seeking an assignment to enable him to supply wholesale purchaser-consumers and end-users, may apply for an assignment under the state set-aside system.

(b) Form of application.

(1) Except as provided in EA 103(b)(2) all applications shall be submitted on forms approved by the Office and shall be signed by the applicant. Each application must be accompanied by a verification form signed by the County or Municipal Fuel

Coordinator, attesting to the applicant's need for the set-aside product. The Office may request such additional information from an applicant as it deems necessary.

(2) An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When in a timely matter an oral application is made, the County or Municipal Fuel Coordinator or some other person approved by the Office shall certify orally to the Office that he has received a signed application from the applicant and will immediately forward it to the Office. It shall be the responsibility of the applicant to insure that the County or Municipal Fuel Coordinator or other approved person contacts the Office. If required forms are not submitted in writing within five days following the oral application, the Office may deny any future oral requests.

(c) Processing. The Office may initiate an investigation of any statement in any application and utilize in its evaluation of the application any relevant facts obtained by such investigation. The State Office may solicit and accept submissions from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond to any third person submissions. In evaluating an application, the Office may consider any other source of information. The Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

If the Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Office may dismiss the application with prejudice.

(d) Criteria: Assignments from the state set-aside may be made to wholesale purchaser-consumers and end-users located within the State who demonstrate hardship or emergency, or to wholesale purchaser-resellers to enable them to supply such persons with respect to propane, middle distillates, motor gasoline, and residual fuel oils. An applicant shall be deemed to demonstrate hardship and emergency when said applicant:

(1) is undergoing curtailment of an energy source and must depend on an alternate source of allocation;

(2) is a wholesale purchaser who has had unusual growth between the base period and the present, and who has applied for but has not yet received an adjustment to his allocation entitlement. For purposes of these rules, "unusual growth" is more than ten percent per year over base period use for gasoline, or five percent per year over base period use for all other products;

(3) demonstrates a change in circumstances which necessitates an increase in allocation and has applied for but has not yet received an adjustment to his allocation entitlement. Changes in circumstances shall include but are not limited to plant expansions, changed traffic patterns, closed retail sales outlets, changes in local economy, unusual seasonal fluctuations, new population or industrial growth. A wholesale purchaser-reseller which operates in a marketing area which experienced unusual growth or other changed circumstances but which is unable to meet the increased demand because its supplier imposed an allocation fraction under the Mandatory Petroleum Allocation Program shall be eligible for an assignment from the state set-aside system;

(e) Procedures for Retail Gasoline Outlets. For purposes of these rules, a retail gasoline outlet is a wholesale purchaser-reseller which purchases or otherwise obtains gasoline and resells or otherwise transfers it to ultimate consumers.

(1) An application for or on behalf of retail gasoline outlets may be submitted by:

(aa) the operator of a retail gasoline outlet. For purpose of these rules, the operator of a retail gasoline outlet is the person who has final responsibility for managing the daily operations of the outlet.

(bb) the supplier of the retail gasoline outlets. In such application, the supplier must identify each outlet on whose behalf the supplier is requesting a set-aside assignment, the location of each outlet and the gallonage requested for each. An application by a supplier on behalf of retail gasoline outlets shall be made separately from any application the supplier submits on behalf of ultimate consumers which he supplies.

(2) Applications by or on behalf of retail gasoline outlets will be considered only after the 15th day of each month, except in exceptional cases or unless the Office issues a public announcement that applications will be considered earlier.

(f) Decision by Office. The Office shall take action on an application by either ordering an assignment, denying the application or requesting more information within five business days after the application has been received by the Office. If an application is denied, a copy of the denial shall be served upon the applicant.

(g) Maximum Quantities of State Set-Aside Assignment. Except in exceptional cases, assignments from the state set-aside shall not be more than enough to satisfy the current requirements of the applicant for the 30-day period for which the assignment is made and shall not represent more than 50% of the average allocation of the four proceding months or 8,000 gallons, whichever is greater.

(h) Assignment of State Set-Aside Supplier. Except in exceptional cases, state set-aside assignments shall be issued

to the prime supplier from whom the applicant obtains the set-aside product. If the set-aside of the prime supplier is exhausted, the Office may issue assignments to alternate prime suppliers or may split assignments between prime suppliers. In the case of a retail gasoline outlet doing business under a brand name associated with a prime supplier, assignments will be made to the outlet only from the set-aside of the prime supplier unless under the allocation program the outlet is also supplied with the product from another prime supplier not associated with that brand or unless the set-aside of the prime supplier is exhausted.

(i) Submission of Order to Prime Supplier. Upon approval of a state set-aside assignment, the Fuel Allocation Coordinator shall issue a written order authorizing the assignment and serve it on the prime supplier, or a designated local distributor of the prime supplier, from whose set-aside the assigned product is to be drawn. Service of an order upon a prime supplier or its local distributor by the Office shall be deemed to be a submission on behalf of the applicant. An order issued by the Office under this section is effective upon issuance, unless stayed, modified, suspended or rescinded, and represents a call on the prime supplier's set-aside volume for the month of issuance, even if delivery of the product cannot be made until the following month.

(j) Appeals. Within 10-days of service of a state set-aside assignment order upon the prime supplier or his distributor or service of a denial upon an applicant, any person aggrieved by said order may file an appeal from the order with the Director. No person shall be deemed to have exhausted his administrative remedies unless he has appealed under this section and a decision has been rendered on the appeal.

(k) Stays. Within 10-days of service of a state set-aside assignment order upon the prime supplier or his distributor, any person who has filed an appeal may file with the Director a request for a stay of the order pending appeal. The Director shall grant the stay if he finds that:

(1) The request shows reason to believe that if the stay is not granted the appellant will suffer irreparable harm or that the purposes of the allocation program will be frustrated, and

(2) There is a reasonable probability that the appeal will be granted.

104 Adjustments and Permanent Assignments.

(a) Any application for an adjustment or a permanent assignment shall be made on forms issued by the Federal Energy Agency for that purpose by filing the appropriate completed form with the Office. Forms shall be available from the Office.

(b) If an adjustment or permanent assignment is recommended by the Office, the Coordinator shall issue a written recommendation to the regional office of the Federal Energy Agency. A copy of the recommendation shall be sent to the applicant and to the applicant's supplier.

(c) If an adjustment or permanent assignment is denied by the Office, the Coordinator shall issue an order of denial. The order shall be served upon the applicant and a copy shall be served upon the applicant's supplier or proposed supplier.

(d) Within 30-days of service of a denial of an adjustment or permanent assignment, any person aggrieved by the denial may file an appeal with the Director. No person shall be deemed to have exhausted his administrative remedies unless he has appealed under this section and a decision has been rendered on the appeal.

105 Fuel Allocation Appeals Board.

All appeals taken under these regulations shall be heard by the Fuel Allocation Appeals Board which shall be composed of the Director or his designate and one member representing each of the following: The Minnesota Department of Agriculture, the Minnesota Department of Commerce, the Minnesota Department of Economic Development, and the Minnesota Public Service Commission. The Director or his designate shall serve as Chairman. Any three members of the Board, provided that one is the Director or his designate, may hear and rule on an appeal.

106 Appeals.

(a) Any person aggrieved by an order of the Office may file an appeal from such order with the Director. Each appeal shall be timely (see 103(i) and 104(d)) and in writing and signed by the appellant. Each appeal shall state:

(1) the reason for the appeal, including the reasons appellant believes the order to be unjust or unwise;

(2) the names and addresses of any person known to appellant who might be adversely affected by the outcome of the appeal;

(3) the nature of the relief sought, whether reversal, modification or some other relief.

(b) Within 10 days after the receipt of an appeal, the Director shall set a hearing date and not less than 10 days before the hearing date, serve upon all affected persons:

(1) a copy of the appeal;

(2) a notice stating the time and place for hearing.

(c) Parties. For purposes of these rules, the parties to an appeal shall be the appellant and the Office. If the appellant is a person other than the original applicant for the order, the applicant may be permitted to intervene. Upon application, any other person may be permitted to intervene upon a showing that he will be adversely affected by the outcome of the appeal, unless the Board determines that his interest is adequately represented by one of the parties.

(d) Counsel. Any party may, but need not be, represented by counsel.

(e) Informal Disposition. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

(f) Default. The Board may dispose of an appeal adversely to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having notice, fails to appear.

(g) Pre-hearing conference. The Board may order a pre-hearing conference to be held at any time prior to hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a pre-hearing conference is ordered, notice of the time and place of said conference shall be served on all parties to the appeal not less than five days before the date of the conference.

107 The Hearing.

(a) Right to a hearing. All parties shall have the right to a hearing before the Board, at which hearing the parties may cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right to cross-examination of witnesses who testify.

(c) Rules of Evidence.

(1) The Board may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or repetitious may be excluded.

(2) Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the Office, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

(3) Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the Board or upon agreement of the parties.

(4) Notice of facts. The Board may take notice of judicially cognizable facts and, in addition, may notice technical facts within its specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(d) The Record. The Board shall prepare an official record in each contested case, which shall contain:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers or proof, objections and rulings thereof;

(5) proposed findings and exceptions;

(6) any decision, opinion or report by the Board, and

(7) all memoranda or data other than advice of legal counsel submitted to the Board by the Office staff in connection with the case.

(e) Transcript. A verbatim record of the hearing shall be taken by a court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the Office agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the Board may require the requesting party to pay the reasonable cost of preparing the transcript.

(f) Hearing Procedure.

(1) After opening the hearing, the Chairman shall indicate the following:

(aa) All parties may present evidence and argument with respect to the issues;

(bb) All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties;

(cc) The rules of evidence as set forth in 107(c);

(dd) All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

(2) A representative of the Office shall introduce the following exhibits:

(aa) The written appeal as received by the Director;

(bb) The notice of hearing;

(cc) Any stipulation, settlement agreements, or consent orders entered into by any of the parties.

(3) The appellant may make an opening statement. All other parties may make such statements in a sequence determined by the Board.

(4) After any opening statements the appellant shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the Board.

(5) Cross-examination of witnesses shall be conducted in a sequence determined by the Board.

(6) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the Board. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

(7) After final argument, the hearing shall be closed or continued at the discretion of the Board. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the record, or (b) continued to a date to be determined later which shall be upon not less than five days written notice to the parties.

(g) Decorum.

(1) The Board may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in its opinion, interfere with or disrupt the hearing.

(2) Other conduct. Pursuant to and in accordance with the provision of Minn. Stat. § 624.72 (1974), no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the Chairman shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

(h) The Board's Decision.

(1) No factual information or evidence which is not part of the record shall be considered by the Board in rendering a decision on an appeal.

(2) Within 20 days after the hearing is closed, the Board shall render its decision on the appeal and issue an

order in writing upholding, modifying or reversing the order of the Office, from which the appeal was taken. The order shall include a statement of the conclusions of fact and law which led to the order.

(3) The order shall be served on all parties to the appeal.

APPROVED AS TO FORM AND LEGALITY
AUG 22 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 27 1975 - 3:45 pm
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
AUG 27 1975
BY Eda Staudenmaier
AUTH. SIGNATURE 3:55 pm

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption by the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA 101- EA 107)

MINNESOTA ENERGY AGENCY

ORDER FOR HEARING

To effectively implement Minnesota Statutes 116H.08 (Minnesota Laws 1974, Chapter 307), the Minnesota Energy Agency deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in the Agency by said Minnesota Statutes Section 116H.08.

NOW, THEREFORE, IT IS ORDERED this 9th day of May, 1975, that a public hearing on the proposed rules captioned above shall be held in the Large Hearing Room on the 7th floor of the American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota on June 23, 1975, commencing at 9:30 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

MINNESOTA ENERGY AGENCY

By John C. McKay
John C. McKay, Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

In the matter of the Proposed Adoption by the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA 101 - EA 107)

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minnesota Statutes Section 15.0412 (1973) and Minnesota Statutes 116H.08 (Minnesota Laws 1974, Chapter 307), in the above-entitled matter in Large Hearing Room, on the 7th floor of the American Center Building, 160 East Kellogg Boulevard, St.Paul, Minnesota on June 23, 1975, commencing at 9:30 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted in writing without appearing at the hearing by mailing to the Minnesota Energy Agency, Room 740, American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, at any time prior to closing of the record. The record shall close at 4:30 P.M. on July 23, 1975.

Copies of the proposed rules are now available and may be obtained by writing to the Minnesota Energy Agency at the address below. Additional copies will be available at the door on the date of the hearing.

These rules are proposed rules only and are subject to alterations or modifications as the Agency deems necessary and appropriate from its consideration of all the evidence adduced at the public hearing and all statements entered into the record.

Dated this 13th day of May, 1975.

MINNESOTA ENERGY AGENCY

By John C. McKay
John C. McKay, Director

Minnesota Energy Agency
740 American Center Building
160 East Kellogg Boulevard
Saint Paul, Minnesota 55101

Telephone: 612/296-5175

5/12/75

CONTENT SUMMARY

Minnesota Energy Agency
Fuel Allocation Division
Rules of Procedure
(EA101-EA107)

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STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CERTIFICATE

In the matter of the Proposed
Adoption by the Minnesota
Energy Agency of the Fuel
Allocation Division
Rules of Procedure
(EA 101 - EA 107)

I hereby certify that the attached 434 labels & one sheet constitute the complete list of persons, associations, and other interested groups who as of 11:00 o'clock A .M., this 13th day of May, 1975, have requested pursuant to M.S. 1974, Stat. 15.0421, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe

JOAN GROWE
Secretary of State
State of Minnesota

By Gail Dion

AFFIDAVIT OF ACQUISITION OF MAILING LIST

STATE OF MINNESOTA)
)SS
COUNTY OF RAMSEY)

In the matter of the Proposed
Adoption by the Minnesota
Energy Agency of the Fuel
Allocation Division
Rules of Procedure
(EA 101 - 107)

JULIE C. CLOSE, being first duly sworn upon oath, deposes and says:

1. That she is a Allocation Caseworker in the Minnesota Energy Agency for the State of Minnesota.

2. That on the 13th day of May, 1975, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minnesota Statute 15.0412.

3. That on the 13th day of May, 1975, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Julie Close
JULIE C. CLOSE

Subscribed and sworn to before me
this 13th day of May, 1975.

Mildred G. Norling

Mildred G. Norling, Notary Public
County of Hennepin, State of Minnesota
My commission expires Feb. 12, 1976

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

In the matter of the Proposed Adoption by the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA 101 - EA 107)

AFFIDAVIT OF MAILING

JULIE C. CLOSE, BEING FIRST DULY SWORN, deposes and says:

That on the 19th day of May, 1975, at the City of Saint Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Julie Close
JULIE C. CLOSE

Subscribed and sworn to before me this 19th day of May, 1975.

Mildred G. Norling

Mildred G. Norling, Notary Public
County of Hennepin, State of Minnesota

My commission expires Feb. 12,1976

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the matter of the Proposed Adoption by the Minnesota Energy Agency Fuel Allocation Division of the Rules of Procedure (EA 101 - 107)

STATEMENT OF NEED

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The Fuel Allocation Division of the Minnesota Energy Agency is responsible for administering certain portions of the Federal Mandatory Fuel Allocation Program. The Division administers the state set-aside fuel program and makes recommendations to the Federal Energy Agency on assignment of suppliers to new end-users. Federal Energy Agency regulations, 10 C.F.R. § 205.220, require the Fuel Allocation Division to establish procedures for appeals of certain Division orders concerning these matters. The above-captioned rules are proposed in order to establish an appeals procedure for orders of the Division concerning the state set-aside and assignments for new end-users. In addition, the rules are necessary in order to establish uniform procedures for processing applications for products from the state set-aside and applications for assignment of a supplier. The rules are also intended to clarify the responsibilities of the County and Municipal Fuel Coordinators under the state set-aside program and to outline criteria used in evaluating applications.

Dated: June 23, 1975

MINNESOTA ENERGY AGENCY

By John C. McKay
John C. McKay
Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA 101 - EA 107)

FINDINGS OF FACT

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The above-entitled matter came on for hearing before the Minnesota Energy Agency (hereinafter the Agency) on the 23rd day of June, 1975, at 9:30 A.M., in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, after proper notice required by Minnesota Statutes § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and upon all members of the Minnesota Legislature.

After affording all persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records, files and proceedings herein, the Agency finds the following:

1. The Fuel Allocation Division (hereinafter the Office) of the Minnesota Energy Agency is the state office designated by the Federal Energy Administration (hereinafter FEA) to make recommendations to FEA concerning adjustments to allocation entitlements and permanent assignment of suppliers and to administer the state set-aside program.

2. FEA regulations, 10 C.F.R. § 205.220, require the Office to adopt procedures for hearing appeals from Office decisions in the above-mentioned areas.

3. The Mandatory Petroleum Allocation Program under which the Office acts in making recommendations and administering the state set-aside is a Federal program, and therefore the Office must follow by applicable Federal law and FEA regulations in making recommendations and administering the set-aside.

4. Because the Office will usually not have time to verify the need of an applicant for an assignment from the state set-aside, it is reasonable to require that applications be verified by County and Municipal Fuel Coordinators.

5. Since in some cases only the applicant will possess information which is necessary to evaluate his application, a provision that the Office may dismiss an application for failure to provide requested information will help insure that applicants will cooperate with the Office.

6. Set-aside assignments are not intended as a substitute for FEA adjustments or exceptions.

7. FEA procedures are sometimes lengthy, and therefore it is reasonable for the Office to make set-aside assignments to persons in the process of seeking FEA relief.

8. Whenever an applicant is forced to switch from one energy source, whether allocated or not, to another, he may undergo hardship necessitating a set-aside award.

9. Because a single supplier may serve a number of retail gasoline outlets, allowing a supplier to apply for a set-aside assignment for more than one outlet will speed up the set-aside process.

10. Making assignments only for an applicant's current requirements and for no more than one-half his average entitlement will discourage reliance on the state set-aside as a substitute for adjustment.

11. Making assignments to the applicant's normal prime supplier whenever possible will avoid disruption of existing market relationships.

12. Because of the emergency nature of the state set-aside and the geographic distribution of suppliers and applicants, the set-aside process will be expedited if the Office itself serves the set-aside order on the supplier on behalf of the applicant.

13. Since Office recommendations on granting applications for permanent suppliers and recommendations on adjustments are acted on by FEA, the only final decisions by the Office on assignments and adjustments are denials of applications for assignment of permanent suppliers.

14. A five person board composed of representatives from various state agencies will insure that a variety of viewpoints will be considered in deciding an appeal.

15. Provisions for informal disposition of appeals and for optional pre-hearing conferences will aid in speedy resolution of appeals.

16. The hearing process will be facilitated if the Appeals Board need not follow the technical rules of evidence, but may instead consider any evidence which has probative value.

Dated: July 31, 1975

MINNESOTA ENERGY AGENCY

By Philip W. Getts
Philip W. Getts,
Acting Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the Matter of the Proposed Adoption by the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA 101 - EA 107)

ORDER ADOPTING RULES

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The above entitled matter came for hearing before the Minnesota Energy Agency on the 23rd day of June, 1975, at 9:30 a.m., in the Large Hearing Room, 7th Floor, American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota, after proper notice required by Minnesota Statute § 15.0412 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose, and upon all members of the Minnesota Legislature.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria and having confirmed the need for the above captioned rules:

NOW, therefore, IT IS ORDERED that these rules identified as EA 101-EA 107 are adopted this 31ST day of July, 1975, pursuant to the authority vested in the Agency by Minn. Stat. § 116H.08(a) (1974).

MINNESOTA ENERGY AGENCY

by Philip W. Getts

Philip W. Getts
Acting Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENERGY AGENCY

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In the matter of the Proposed Adoption By the Minnesota Energy Agency of the Fuel Allocation Division Rules of Procedure (EA101-EA107)

STATE OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

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I, Special Assistant Attorney General Joan Swartz, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Joan Swartz

JOAN SWARTZ
Special Assistant
Attorney General

Dated: August 7, 1975.

No copy of the Secretary of State's mailing list is included, because it was inadvertantly thrown away. However, notice was sent to all persons on the list.

proposed

MINNESOTA ENERGY AGENCY
FUEL ALLOCATION DIVISION
RULES OF PROCEDURE
EA 101 - EA 107

101 Introduction.

The Federal Mandatory Petroleum Allocation Regulations, 10 CFR § 205.1 et seq. provide for extensive involvement by State Government in the management of the Federal Petroleum Allocation Program.

In Minnesota, the Fuel Allocation Division of the Minnesota Energy Agency has been certified by the Federal Energy Agency as the state office with the responsibility for carrying out the administration of this program.

These rules represent the procedures of the Fuel Allocation Division with respect to state set-aside assignments, permanent assignments or adjustments to allocation entitlements and appeals from orders concerning those subjects.

102 Definitions.

For purposes of these rules, the following definitions shall apply:

(a) "Adjustment" means a recommendation by the Office to the Federal Energy Agency that an applicant's allocation entitlement for a petroleum product be permanently changed.

(b) "Board" means the Fuel Allocation Appeals Board.

(c) "Coordinator" means the head of the Fuel Allocation Division, who is authorized to sign orders and authorizing documents for state set-aside assignments, adjustments and permanent assignments on behalf of the Director.

(d) "County and/or Municipal Fuel Coordinator" means any person who has been appointed by his county board or city council to perform certain actions with regard to fuel allocation.

(e) "Current Requirements" means the supply of an allocated product needed by an end-user or wholesale purchaser to meet its present supply requirement for any single month.

(f) "Director" means the Director of the Minnesota Energy Agency.

(g) "End-User" means any person who is an ultimate consumer of an allocated product other than a wholesale purchaser-consumer.

(h) "Office" means the Fuel Allocation Division of the Minnesota Energy Agency.

(i) "Order" means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the Office concerning state set-aside assignments, adjustments or permanent assignments, or a written document issued by the Board deciding an appeal from an order of the Office. An order is effective on the date of its issuance. An order shall be deemed to be issued on the date on which it is signed by the Coordinator or Director.

(j) "Permanent Assignment" means a recommendation by the Office to the Federal Energy Agency that an applicant be assigned a permanent supplier and an allocation entitlement.

(k) "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution.

(l) "Prime Supplier" means the supplier or producer who makes the first sale of any allocated product subject to the state set-aside into the state distribution system for consumption within the state.

(m) "Purchaser" means a wholesale purchaser, an end-user, or both.

(n) "Service" means personal service or service by registered or certified United States mail, postage prepaid and addressed to the person at his last known address. Service upon a person's duly authorized representative shall constitute service upon that person. Service by registered or certified mail is complete upon mailing.

(o) "Set-Aside Assignment" means an order directing a prime supplier to make a product from its state set-aside available to a designated person.

(p) "State" means State of Minnesota.

(q) "State Set-Aside" means, with respect to a particular prime supplier, the amount of an allocated product which is made available from the total supply of a prime supplier pursuant to Federal regulations for utilization by the office to resolve emergencies and hardships due to fuel shortages. The state set-aside amount for a particular month and state is calculated by multiplying the state set-aside percentage level by the prime supplier's estimated portion of its total supply for that month which will be sold into the state's distribution system for consumption within the state.

(r) "Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers, or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including but not limited to refiners, natural gas processing plant or fractionating plants, importers, resellers, jobbers and retailers.

(s) "Wholesale Purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer.

(t) "Wholesale Purchaser-Consumer" means any ultimate consumer which, as part of its normal business practices,

purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (i) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (2) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; (3) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.

(u) "Wholesale Purchaser-Reseller" means any person who purchases, receives through transfer, or otherwise obtains (as by consignment) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form.

103 State Set-Aside Assignments: Procedures.

(a) Who may file. A wholesale purchaser-consumer or an end-user, seeking an assignment to meet current requirements because of hardship or emergency, and a wholesale purchaser-reseller, seeking an assignment to enable him to supply wholesale purchaser-consumers and end-users, may apply for an assignment under the state set-aside system.

(b) Form of application.

(1) Except as provided in EA 103(b)(2) all applications shall be submitted on forms approved by the Office and shall be signed by the applicant. Each application must be accompanied by a verification form signed by the County or Municipal Fuel

Coordinator, attesting to the applicant's need for the set-aside product. The Office may request such additional information from an applicant as it deems necessary.

(2) An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When in a timely matter an oral application is made, the County or Municipal Fuel Coordinator or some other person approved by the Office shall certify orally to the Office that he has received a signed application from the applicant and will immediately forward it to the Office. It shall be the responsibility of the applicant to insure that the County or Municipal Fuel Coordinator or other approved person contacts the Office. If required forms are not submitted in writing within five days following the oral application, the Office may deny any future oral requests.

(c) Processing. The Office may initiate an investigation of any statement in any application and utilize in its evaluation of the application any relevant facts obtained by such investigation. The State Office may solicit and accept submissions from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond to any third person submissions. In evaluating an application, the Office may consider any other source of information. The Office on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

If the Office determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the Office may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the Office may dismiss the application with prejudice.

(d) Criteria: Assignments from the state set-aside may be made to wholesale purchaser-consumers and end-users located within the State who demonstrate hardship or emergency, or to wholesale purchaser-resellers to enable them to supply such persons with respect to propane, middle distillates, motor gasoline, and residual fuel oils. An applicant shall be deemed to demonstrate hardship and emergency when said applicant:

(1) is undergoing curtailment of an allocated energy source and must depend on an alternate source of allocation.

(2) is a wholesale purchaser who has had unusual growth between the base period and the present, and who has applied for but has not yet received an adjustment to his allocation entitlement. For purposes of these rules, "unusual growth" is more than ten percent per year over base period use for gasoline, or five percent per year over base period use for all other products.

(3) demonstrates a change in circumstances which necessitates an increase in allocation and has applied for but has not yet received an adjustment to his allocation entitlement. Changes in circumstances shall include but are not limited to plant expansions, changed traffic patterns, closed retail sales outlets, changes in local economy, unusual seasonal fluctuations, new population or industrial growth. A wholesale purchaser-reseller which operates in a marketing area which experienced unusual growth or other changed circumstances but which is unable to meet the increased demand because its supplier imposed an allocation fraction under the Voluntary Petroleum Allocation Program shall be eligible for an assignment from the state set-aside system.

(e) Procedures for Retail Gasoline Outlets. For purposes of these rules, a retail gasoline outlet is a wholesale purchaser-reseller which purchases or otherwise obtains gasoline and resells or otherwise transfers it to ultimate consumers.

(1) An application for or on behalf of retail gasoline outlets may be submitted by:

(aa) the operator of a retail gasoline outlet. For purpose of these rules, the operator of a retail gasoline outlet is the person who has final responsibility for managing the daily operations of the outlet.

(bb) the supplier of the retail gasoline outlets. In such application, the supplier must identify each outlet on whose behalf the supplier is requesting a set-aside assignment, the location of each outlet and the gallonage requested for each. An application by a supplier on behalf of retail gasoline outlets shall be made separately from any application the supplier submits on behalf of ultimate consumers which he supplies.

(2) Applications by or on behalf of retail gasoline outlets will be considered only after the 15th day of each month, except in exceptional cases or unless the Office issues a public announcement that applications will be considered earlier.

(f) Decision by Office. The Office shall take action on an application by either ordering an assignment, denying the application or requesting more information within five business days after the application has been received by the Office. If an application is denied, a copy of the denial shall be served upon the applicant.

(g) Maximum Quantities of State Set-Aside Assignment. Except in exceptional cases, assignments from the state set-aside shall not be more than enough to satisfy the current requirements of the applicant for the 30-day period for which the assignment is made and shall not represent more than 50% of the average allocation of the four proceding months or 8,000 gallons, whichever is greater.

(h) Assignment of State Set-Aside Supplier. Except in exceptional cases, state set-aside assignments shall be issued

to the prime supplier from whom the applicant obtains the set-aside product. If the set-aside of the prime supplier is exhausted, the Office may issue assignments to alternate prime suppliers or may split assignments between prime suppliers. In the case of a retail gasoline outlet doing business under a brand name associated with a prime supplier, assignments will be made to the outlet only from the set-aside of the prime supplier unless under the allocation program the outlet is also supplied with the product from another prime supplier not associated with that brand or unless the set-aside of the prime supplier is exhausted.

(i) Submission of Order to Prime Supplier. Upon approval of a state set-aside assignment, the Fuel Allocation Coordinator shall issue a written order authorizing the assignment and serve it on the prime supplier, or a designated local distributor of the prime supplier, from whose set-aside the assigned product is to be drawn. Service of an order upon a prime supplier or its local distributor by the Office shall be deemed to be a submission on behalf of the applicant. An order issued by the Office under this section is effective upon issuance, unless stayed, modified, suspended or rescinded, and represents a call on the prime supplier's set-aside volume for the month of issuance, even if delivery of the product cannot be made until the following month.

(j) Appeals. Within 10-days of service of a state set-aside assignment order upon the prime supplier or his distributor or service of a denial upon an applicant, any person aggrieved by said order may file an appeal from the order with the Director. No person shall be deemed to have exhausted his administrative remedies unless he has appealed under this section and a decision has been rendered on the appeal.

(k) Stays. Within 10-days of service of a state set-aside assignment order upon the prime supplier or his distributor, any person who has filed an appeal may file with the Director a request for a stay of the order pending appeal. The Director shall grant the stay if he finds that:

(1) The request shows reason to believe that if the stay is not granted the appellant will suffer irreparable harm or that the purposes of the allocation program will be frustrated, and

(2) There is a reasonable probability that the appeal will be granted.

104 Adjustments and Permanent Assignments.

(a) Any application for an adjustment or a permanent assignment shall be made on forms issued by the Federal Energy Agency for that purpose by filing the appropriate completed form with the Office. Forms shall be available from the Office.

(b) If an adjustment or permanent assignment is recommended by the Office, the Coordinator shall issue a written recommendation to the regional office of the Federal Energy Agency. A copy of the recommendation shall be sent to the applicant and to the applicant's supplier.

(c) If an adjustment or permanent assignment is denied by the Office, the Coordinator shall issue an order of denial. The order shall be served upon the applicant and a copy shall be served upon the applicant's supplier or proposed supplier.

(d) Within 30-days of service of a denial of an adjustment or permanent assignment, any person aggrieved by the denial may file an appeal with the Director. No person shall be deemed to have exhausted his administrative remedies unless he has appealed under this section and a decision has been rendered on the appeal.

105 Fuel Allocation Appeals Board.

All appeals taken under these regulations shall be heard by the Fuel Allocation Appeals Board which shall be composed of the Director or his designate and one member representing each of the following: The Minnesota Department of Agriculture, the Minnesota Department of Commerce, the Minnesota Department of Economic Development, and the Minnesota Public Service Commission. The Director or his designate shall serve as Chairman. Any three members of the Board, provided that one is the Director or his designate, may hear and rule on an appeal.

106 Appeals.

(a) Any person aggrieved by an order of the Office may file an appeal from such order with the Director. Each appeal shall be timely (see 103(i) and 104(d)) and in writing and signed by the appellant. Each appeal shall state:

(1) the reason for the appeal, including the reasons appellant believes the order to be unjust or unwise.

(2) the names and addresses of any person known to appellant who might be adversely affected by the outcome of the appeal.

(3) the nature of the relief sought, whether reversal, modification or some other relief.

(b) Within 10 days after the receipt of an appeal, the Director shall set a hearing date and not less than 10 days before the hearing date, serve upon all affected persons:

(1) a copy of the appeal

(2) a notice stating the time and place for hearing.

(c) Parties. For purposes of these rules, the parties to an appeal shall be the appellant and the Office. If the appellant is a person other than the original applicant for the order, the applicant may be permitted to intervene. Upon application, any other person may be permitted to intervene upon a showing that he will be adversely affected by the outcome of the appeal, unless the Board determines that his interest is adequately represented by one of the parties.

(d) Counsel. Any party may, but need not be, represented by counsel.

(e) Informal Disposition. Informal disposition may be made of an appeal or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

(f) Default. The Board may dispose of an appeal adversely to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having notice, fails to appear.

(g) Pre-hearing conference. The Board may order a pre-hearing conference to be held at any time prior to hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a pre-hearing conference is ordered, notice of the time and place of said conference shall be served on all parties to the appeal not less than five days before the date of the conference.

107 The Hearing.

(a) Right to a hearing. All parties shall have the right to a hearing before the Board, at which hearing the parties may cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right to cross-examination of witnesses who testify.

(c) Rules of Evidence.

(1) The Board may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or repetitious may be excluded.

(2) Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the Office, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

(3) Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the Board or upon agreement of the parties.

(4) Notice of Facts. The Board may take notice of judicially cognizable facts and, in addition, may notice technical facts within its specialized knowledge. Where final determination rests on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(d) The Record. The Board shall prepare an official record in each contested case, which shall contain:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers or proof, objections and rulings thereof;

(5) proposed findings and exceptions;

(6) any decision, opinion or report by the Board, and

(7) all memoranda or data other than advice of legal counsel submitted to the Board by the Office staff in connection with the case.

(e) Transcript. A verbatim record of the hearing shall be taken by a court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the Office agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the Board may require the requesting party to pay the reasonable cost of preparing the transcript.

(f) Hearing Procedure.

(1) After opening the hearing, the Chairman shall indicate the following:

(aa) All parties may present evidence and argument with respect to the issues;

(bb) All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties;

(cc) The rules of evidence as set forth in 107(c);

(dd) All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

(2) A representative of the Office shall introduce the following exhibits:

(aa) The written appeal as received by the Director;

(bb) The notice of hearing;

(cc) Any stipulation, settlement agreements, or consent orders entered into by any of the parties.

(3) The appellant may make an opening statement. All other parties may make such statements in a sequence determined by the Board.

(4) After any opening statements the appellant shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the Board.

(5) Cross-examination of witnesses shall be conducted in a sequence determined by the Board.

(6) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the Board. Such rebuttal and final argument may be in the form of written memoranda, oral argument or both.

(7) After final argument, the hearing shall be closed or continued at the discretion of the Board. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a party of the record, or (b) continued to a date to be determined later which must be upon not less than five days written notice to the parties.

(g) Decorum.

(1) The Board may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in its opinion, interfere with or disrupt the hearing.

(2) Other conduct. Pursuant to and in accordance with the provision of Minn. Stat. § 624.72 (1974), no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the Chairman shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

(h) The Board's Decision.

(1) No factual information or evidence which is not part of the record shall be considered by the Board in rendering a decision on an appeal.

(2) Within 20 days after the hearing is closed, the Board shall render its decision on the appeal and issue an

order in writing upholding, modifying or reversing the order of the Office, from which the appeal was taken. The order shall include a statement of the conclusions of fact and law which led to the order.

(3) The order shall be served on all parties to the appeal.