

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

File No. 810

5/3 Wagenius requested to send Cert. of Compliance

RULE REVIEW CHECKLIST

RULE RECEIVED 4-26-82
E FOR REVIEW 5-7-82
ATE DUE 5-17-82

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved 5-7-82 Disapproved Returned to Agency 5-7-82

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 5-7-82 Revisor approved 5/4/82 disapproved

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✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.21.82 Date Readoption 4.13.82 (combined with FofF)

✓ Notices of Intent to Solicit Outside Opinion SR 11/5/79 and SR 2/11/80 and SR 3/24/80 and SR 9/5/8 and SR 3/9/81

✓ Order for rulemaking 9/29, 10/1, 10/5/81 date of Hearing (originally 8/18, 20, 24 — rescheduled).

N/A Certificate of Board's Authorizing Resolution

✓ Notices of rulemaking - Original + Resked.
✓ Sufficiency HE found that original as mailed was deficient

✓ Affidavits of Mailing Notice or rulemaking 6/25 and 8/5/81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificates — N.B 2ND Cert. postdates Affidavit of Mailing

✓ Publication in State Register 6/29/81 At least 30/~~20~~ days prior to hearing/~~adoption~~ 8/17/81

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
✓ 11.30.81 Approving H.E.'s Report Disapproving Agency Action 2.23.82
✓ 4.21.82 Approving agency action

✓ Agency's Findings of Fact 1/21/82 and 4/13/82, combined with readopting Order

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Energy, Planning & Development

TO : Ted Martinez✓
Judith Wehrwein
Office of the Attorney General

DATE: May 14, 1982

FROM : Michael Murphy
Assistant Commissioner, Energy Division

PHONE:

SUBJECT: Promulgation of the Petroleum Supply Emergency Rules

The Petroleum Supply Emergency Rules have been submitted to the State Register and barring unforeseen problems will become law on May 29, 1982. Thank you for your expedious treatment of these rules. Given these days of scarce resouces, I am particularly appreciative of your effort to complete the review process before the 20 day maximum period. Without your extra effort in promptly reviewing these rules, the three years and many thousands of dollars that the Energy Division has committed to them would have been for naught.

Again, let me extended my sincere thanks.

MM:mmo
cc: Mike Miles, AG
Dwight Wagenius, AG
Ron Visness, DEPD/ED
David Buller, DEPD/ED

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MICHAEL J. MURPHY
Acting Director, MN Energy Agency

DATE: 5/7/82

ATTN : DWIGHT G. WAGENIUS, Spec. Ass't. Atty. Gen.

FROM : TED A. MARTINEZ
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Emergency Conservation and Allocation Plan During a Petroleum Shortage, 6 MCAR §§ 2.3101-2.3121

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

TAM:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower
Energy

Office Memorandum

TO : JUDITH WEHRWEIN
Rules Review - Administration

DATE: April 26, 1982

FROM : DWIGHT S. WAGENIUS DSWagenius
Special Assistant Attorney General

PHONE: 6-3304

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Conservation and Allocation Plan During a Petroleum Supply Shortage, 6 MCAR §§ 2.3101-2.3121; Docket No. EA-81-005-PR

On behalf of my client, the Energy Division of the Department of Energy, Planning and Development, I enclose and submit to the Attorney General for review adopted rules of the Department and documents related thereto. This submission is made in accordance with Minn. Stat. § 15.0412 and the Attorney General's rules review procedures rules - especially 1 MCAR § 1.202. With a copy of this memorandum, I also submit a copy of the rules as adopted to the Revisor for approval as to form, in accordance with Minn. Stat. § 15.0412, subd. 10. To both the Attorney General and the Revisor, I also submit on behalf of my client an earnest request for expeditious treatment within the constraints of law and practicality for the reasons set out below. Thanks in advance for your cooperation.

The Agency commenced informally planning this rulemaking several years ago and began the process formally on November 5, 1979, with the publication of a Notice of Intent to Solicit Outside Information regarding rules which might be implemented during a fuel oil shortage and similarly on February 11, 1980, regarding rules relating to a gasoline shortage. Significant public input was received. In Mid-1981 the Agency initiated the hearing process before the Office of Administrative Hearings after having combined its proposals on plans for motor fuel, fuel oil, and gasoline shortages into one set of rules for implementation during a petroleum supply shortage. There followed three days and nights of public hearings, again with significant participation by members of the general public and representatives of potentially affected interest groups. Two rules were formally withdrawn from consideration and other changes were noted.

The Hearing Examiner's report on the rules dated November 25, 1981 was issued to the Agency on November 30, 1981, along with a Report of Chief Hearing Examiner. The Hearing Examiner found, and the Chief Hearing Examiner approved the finding of, a few defects in the rules. The Agency finally corrected the defects to the Hearing Examiner's satisfaction on April 21, 1981.

Because of its prospective merger into the Department of Energy, Planning and Development and the concomitant reductions in staff and budget, and because no petroleum shortage appeared imminent, and for whatever other reasons, the Agency proceeded to its adoption of the rules in no particular haste. This lack of haste does not indicate a lack of seriousness, need for the rules, or investment by the Agency. The Agency expended tens of thousands of dollars in publications, mailings, direct and indirect personnel costs, and in hearing expenses including hearing examiner, traveling, etc. The Agency further believes, and I agree, that notwithstanding its extraordinary efforts in seeking and obtaining public input and accommodating many interests, the rules could not in the past and cannot in the future successfully be adopted in a noncontroversial process in accordance with section 15.0412, subdivision 4h.

The Chief Hearing Examiner's Report of April 21, 1981 brought to the fore a good reason for haste. He referred in in passing in his Report to the requirement of Minn. Stat. § 15.0412, subd. 9, that rulemaking processes must be completed within six months after the issuance of the hearing examiner's report. The reference refreshed my recollection of the requirement but, having never taken and never having expected to have taken so much time to adopt rules, neither my actions, nor my client's, had been based on the six month statutory deadline.

Since the Report of the Hearing Examiner is dated November 25, 1981, I have assumed we were operating on a May 25, 1982, deadline. However, since that Report was not issued to the Agency but rather forwarded directly to the Chief Hearing Examiner (without notice to the Agency), who issued the Report together with his own to the Agency on November 30, 1981, I believe the statutory six-month period began on the latter date, November 30. The period, then, runs on May 30 (delayed to June 1 by operation of Minn. Stat. § 645.15), or on May 25 if the date of the Report of Hearing Examiner prevails. If my alternative analysis of time limits is correct, i.e., November 30, 1981, as the base date, then we all have an additional calendar week to work on the rules. If pushed, I would insist on behalf of my client that it is a correct analysis. However, the prudent course is to act now assuming that the earlier deadline applies.

The safe course assumes that publication of an adopted rule in the State Register of May 24 would be the latest that could satisfy the law. Counting back two weeks gives May 10, 1982, as the last day for submission of approved adopted rules to the State Register. Counting from today the ten days that you must hold the rules before acting on them, in accordance with 1 MCAR § 1.206 C., brings one to May 6, 1982. There is only one working day between May 6 and May 10, i.e., May 7.

One series of necessary changes in the form of the rules is known and is being implemented by the Revisor. Those changes reflect the merger of the Agency into DEPD by changing MEA to DEPD, Director to Commissioner, etc. You should also know that the Agency mailed today more than 100 Notices of Submission to the Attorney General. Practically all of those notices were sent to RV (Recreational Vehicles) enthusiasts. The Agency withdrew the two rules directly affecting RV use. An Order withdrawing the rules and a supporting analysis are in the record. I include these comments to let you know that you may get calls or letters from RV enthusiasts who have forgotten or do not know that they succeeded in showing during the hearings that the Agency had not made its case on these two rules.

All of which is to say that, even if the rules are substantively acceptable, the rules can be adopted and published within the statutory limits only if the procedure is accelerated to its legal maximum speed. Certainly I and the Agency (Energy Division) will do whatever we can to assist you. Contact people at the Agency are Greg Holman (7-2873) and Abigail McKenzie (6-8285).

DSW:bl

Enclosure

cc: Ann Bateson, Deputy Revisor (Rules)

Department of Energy, Planning and Development

Energy Division

Adopted Rules Relating to Reducing Demand and Increasing Supply of Petroleum Products during an Energy Supply Emergency

Rules as Adopted

6 MCAR S 2.3101 Authority. These rules are authorized by Minn. Stat. S 116H.09 ~~(1980)~~. These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section ~~102~~ 212, 42 United States Code, ~~Sections 8511 to 8541 (1979)~~ Section 8512 (1976 and Supplement III 1979).

6 MCAR S 2.3102 Purpose. These rules identify measures that may be used in the event of a petroleum supply emergency. The further purposes of these rules are: to protect the health and safety of the citizens of the state by ensuring that certain priority petroleum users have sufficient fuel to conduct essential activities; to facilitate the distribution of supplies to the public in a fair manner; to identify and authorize the actions to be undertaken by governmental agencies in an energy supply emergency; to describe the responsibilities of major employers and school district authorities in petroleum supply emergency planning and implementation; to establish an appeals system and procedures for exemptions from and exceptions to emergency measures; and to authorize the state executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR S 2.3103 Applicability of rules. These rules shall apply:

A. generally, during a declared energy supply emergency (see 6 MCAR S 2.3106);

B. generally, during a declared energy supply alert (see 6 MCAR S 2.3105);

C. to the Minnesota Department of Energy ~~Agency~~, Planning and Development when the ~~agency~~ department is preparing to

recommend that an energy supply alert or an energy supply emergency be declared.

6 MCAR S 2.3104 Definitions. For purposes of 6 MCAR SS 2.3101-2.3121 the terms defined in this rule have the meanings given them:

A. ~~"Ageney" means the Minnesota Energy Ageney;~~

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

1. Major Group 01-Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.

2. Major Group 02-Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.

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

4. Major Group 09-Fishing, Hunting, and Trapping.

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

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

7. Group 515-Farm Product Raw materials (all industry codes found thereunder).

8. Major Group 54-Food Stores.

~~C.~~ B. "Assistant ~~director~~ commissioner" means the assistant ~~director~~ commissioner of the Minnesota Department of Energy ~~Ageney~~, Planning and Development who heads the ~~Data and Analysis~~ Energy Division;

~~D.~~ C. "Baseline consumption" means the reasonable estimate

of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules~~,~~:

1. the preceding 12 months, or

2. the most recent 3-year average, or

3. a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted.

~~E.~~ D. "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

~~F.~~ E. "Cargo, freight and mail hauling ~~by truck~~, including newspaper deliveries" means: motor carriers for hire, licensed and operating under Minn. Stat. SS ~~221.001~~ 221.011 to 221.293 including independent owner-operators transporting goods under a lease or contract indicating their "for hire" status, where the lease can be produced by the driver-operator; local cartage carriers, licensed and operating under Minn. Stat. S 221.296; interstate motor carriers, operating in Minnesota under Minn. Stat. SS 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier; trucks that have truck bodies specifically designed for cargo and freight hauling and are commercial vehicles as defined in H.; and rail, barge and ship transportation of cargo or freight;

~~G.~~ F. "Carpool" means a continuing travel arrangement by which three or more persons travel together in a vehicle owned or rented by one or more of such persons;

~~H.~~ G. "Commercial building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

~~I.~~ H. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or

vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

I. "Commissioner" means the Commissioner of the Minnesota Department of Energy, Planning and Development;

J. "Company-owned vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

K. "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

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

M. "Demand" means the quantity of products or services for which there are willing and able purchasers;

N. ~~"Director"~~ "Department" means the ~~Director of the~~ Minnesota Department of Energy ~~Agency~~, Planning and Development;

O. "Division" means the Division of Emergency Services of the Department of Public Safety;

P. "Division Director" means the Director of the Division of Emergency Services;

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

R. "Emergency vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly-owned law enforcement vehicle or privately-owned vehicle used by a law enforcement officer for police work under agreement, express or implied, with the local authority; a vehicle of a licensed emergency ambulance service, whether publicly or privately owned; an emergency vehicle of a municipality, department or public service corporation including emergency services vehicles approved by the chief of police of a municipality, the county sheriff, or the division director; a vehicle of a utility or contractor while performing emergency repairs or maintenance for electric, water, waste treatment,

natural gas or telecommunications utilities and end-user primary services, and petroleum, petroleum products or natural gas pipelines or facilities; a vehicle of the state, county, municipal, or other subdivision of government used for snow removal, emergency road and traffic signal repair or search and rescue operations, or privately-owned vehicles of a contractor under contract to perform these services;

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

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

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

V. "Environmental standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential government services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular activities" means school-sponsored activities requiring transportation off-campus, except for the

daily transportation of students to and from school;

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

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel oil" means a liquid or liquifiable petroleum product with a flashpoint above 100 degrees F which is used to generate heat or power including middle distillate oil or residual oil;

BB. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means interstate, trunk, county state-aid, county, and municipal state-aid highways in Minnesota, as defined in Minn. Stat. S 160.02, subds. 2-5 and 7 ~~(1980)~~, and ~~the Federal Aid Highways Act of 1956~~ 23 United States Code, section 101 (1980);

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

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

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minn. Stat. S 168.27, subds. 2 ~~to~~-25 ~~(1980)~~;

GG. "Middle distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370 degrees and 700 degrees F, except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in ~~VV-F-815C of~~ ASTM D-396,

grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military uses" means the activities of the armed forces of the United States and of the Minnesota Department of Military Affairs, the Office of Adjutant General, military reservations, installations, armories, air bases, and facilities owned or controlled by the state for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minn. Stat. chs. 190 ~~to~~-193 ~~(1980)~~, known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

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

KK. "Motor fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine;

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

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

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

OO. "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety to designate the weekday on which a

vehicle issued that sticker is prohibited from being operated;

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

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

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

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

TT. "Residual fuel oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700 degrees F in the ASTM D-86 standard distillation test;

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

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

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

XX. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs under Minn.

Stat. S 116H.095 ~~(1981)~~;

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

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

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

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

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

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

6 MCAR S 2.3105 Energy supply alert. An energy supply alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

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

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

6 MCAR S 2.3106 Energy supply emergency. An energy supply emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

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

B. The executive council or legislature. The executive council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the legislature has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minn. Stat. S 116H.09, subd. 5 ~~(1980)~~.

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

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the executive council or legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the division, the ~~Agency~~ department and the Secretary of State.

6 MCAR S 2.3107 Operating organization during an emergency.

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

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

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

B. Minnesota Department of Energy ~~Ageney~~, Planning and Development.

1. The ~~ageney~~ department shall assist the division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

2. The ~~ageney~~ department shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR S 2.3114 ~~A. to C.~~, 6 MCAR S 2.3120 ~~A. to H.~~ and 6 MCAR S 2.3121 ~~A. to D.~~ capable of eliminating a fuel shortage.

3. The assistant ~~director of the ageney~~ commissioner shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR S 2.3120 B. or C.

4. The ~~director~~ commissioner shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

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

state.

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

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given the Governor in the Minnesota Civil Defense Act, Minn. Stat. ch. 12.

6 MCAR S 2.3108 Local energy conservation board.

A. Each county and each city of the first class shall create a local energy conservation board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR SS 2.3114 A. ~~and~~, B., C.1. and 4., 2.3120 ~~A. to H.~~, except B. and C., and 2.3121 ~~A. to E.~~

1. The Governor may order ~~the creation of~~ additional local energy conservation boards to be established upon the ~~agency's~~ department's determination that additional boards are necessary to insure compliance with the timing provisions in 6 MCAR S 2.3109 C.

2. The appointment of additional local energy conservation boards and their conduct shall be governed by the procedures set forth in B. and 6 MCAR ~~SS 2.3108 B. and~~ S 2.3109.

B. Members.

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

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal local energy conservation board which

includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the ~~chair of the city council~~ fuel coordinator is ~~unable~~ not able to ~~fill~~ sit on the local conservation board ~~from this list~~, an additional ~~members~~ member shall be selected from the public. The city attorney shall advise the local energy conservation board.

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

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

6 MCAR S 2.3109 Appeals.

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

1. An appeal of mandatory measures, except those described in 6 MCAR SS 2.3114 C. 2. and 3. and 2.3120 B. and C., shall be heard by the local energy conservation board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, ~~Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104~~ Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR S 2.3114 C. 3., or an order to adopt temporary rules for relaxation of environmental standards 6 MCAR S 2.3114 C.2., and an appeal of priority status shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be

directed to the ~~State~~ Office of Administrative Hearings, ~~Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104~~ Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

~~4. An appeal from the petroleum supply emergency conservation rules shall be decided by the director and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.~~

B. Content of appeal.

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

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

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

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

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

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

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR S 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR S 2.3120 B.9.a. employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three working days after receipt of an appeal, the local conservation board or hearing examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The chair of the local conservation board (or designate), or the hearing examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in ~~6 MCAR S 2.3109~~ A. A local energy conservation board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. ~~The "Rules of Procedure for Contested Cases" found at 9 MCAR SS 2.201-2.222 shall govern the conduct of the appeals.~~ Appeals shall be governed by the Administrative Procedure Act, Minn. Stat. SS 15.0411-15.052 and the rules of the Office of Administrative Hearings (9 MCAR SS 2.201-2.299), except that during an energy supply emergency the provisions of 6 MCAR S 2.3109 shall supercede the above-cited rules wherever the two conflict with one another.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the assistant ~~Director~~ commissioner as a party to the appeal.

4. A party may be represented by counsel.

5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under ~~6 MCAR S 2.3109~~ E.

6. Informal disposition of an appeal or any issue in an

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

7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the emergency operating center to appear at a hearing of a local energy conservation board on an appeal from an emergency measure shall not constitute a default or bar the ~~director~~ commissioner from reversing the board's decision so long as the ~~director~~ commissioner complies with the timing provisions in 6 MCAR § ~~2.3109~~ E.3.

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

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

D. Hearings.

1. An appellant has a right to a hearing before the local energy conservation board, or the hearing examiner, whichever is appropriate. (See 6 MCAR § ~~2.3108~~ A.) At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The local energy conservation board or the hearing examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing ~~may~~ shall bear the expense of preparing the transcript.

3. The chair of the local energy conservation board and

the hearing examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The hearing examiner or local conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent ~~fact~~ facts.

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

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

4. The appellant may seek judicial review of a final decision of the ~~director~~ commissioner in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. SS 15.0411 ~~to .052 (1980)~~ -15.052.

6 MCAR S 2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. S 116H.15 ~~(1980)~~.

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

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

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

6 MCAR S 2.3111 Priority uses of fuel oil.

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR S 2.3114 ~~A. to C.~~, are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before the lower priority consumers.

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

1. First priority fuel oil uses are:

a. Health and residential care services;

b. Residential heating;

c. Passenger transportation;

d. Plant protection;

e. Emergency vehicles;

f. Telecommunications;

g. Energy production;

h. Agriculture;

i. Sanitation services; and

j. Essential government services.

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

a. Cargo and freight hauling, except for the first priority uses as defined in ~~6 MCAR § 2.3111~~ B.1.

b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR S ~~2.3111~~ 2.3120 and 6 MCAR S 2.3121.

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

a. Schools and religious institutions;

b. Government, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;

c. Commerce, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;

d. Industry, except those services listed in ~~6 MCAR § 2.3111~~ B.1.

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

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

~~5.~~ 6. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures ~~under 6 MCAR §§ 2.0101 to 2.0107~~ developed according to Minn. Stat. S 116H.095. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

6 MCAR S 2.3112 Priority uses of motor fuel.

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR SS 2.3120 ~~A. to H.~~ and 6 MCAR S 2.3121 ~~A. to E.~~ are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

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

1. First priority motor fuel uses are:

a. Military uses;

b. Emergency vehicles;

c. Energy production;

d. Sanitation services;

e. Telecommunications;

f. Agriculture;

g. Passenger transportation;

h. Cargo, freight, and mail hauling ~~by truck~~, including newspaper deliveries; and

i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR SS 2.3120 ~~A. to H.~~, and 6 MCAR S 2.3121 ~~A. to D.~~, are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided ~~under~~ by Minn. Stat. S 116H.095 ~~(1981)~~, if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures ~~under 6 MCAR SS 2.0101 to 2.0107~~ adopted according to Minn. Stat. S 116H.095. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or

operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR S 2.3110.

5. When a motor fuel is also used as a home heating fuel and that specific fuel is in short supply, the fuel oil priority rankings described in 6 MCAR S 2.3111 shall apply.

6 MCAR S 2.3113 Severe shortage. If the ~~director~~ commissioner determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority consumers of motor fuel or diesel fuel, then the ~~director~~ commissioner shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

6 MCAR S 2.3114 Fuel oil emergency measures. Upon declaration of an energy supply emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary measures:

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

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

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

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

a. The ~~Fuel Allocation Rules of Procedure (6MCAR SS 2.0101-2.0107)~~ procedures for state set-aside allocation adopted according to Minn. Stat. S 116H.095 will be used to allocate voluntarily released inventory.

b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR S 2.3111 B.

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

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

B. Mandatory measures.

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

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering the building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the pool when power from nonpetroleum-fired generating

facilities is available from the pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

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

C. When the ~~ageney~~ department determines that actions listed in 6 MCAR S 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62 degrees Fahrenheit during the day where such action does not violate ~~Minnesota~~ rule MOSHC ~~41f.~~ 41(f) of the Department of Labor and Industry, and 50 degrees Fahrenheit at night or during unoccupied periods.

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

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

a. Order of curtailment will be based on an industry's energy-labor ratio, defined as the sum of natural gas and fuel oil consumption Btu's per year per employee. The ~~industry~~

industrial sector with the highest energy-labor ratio will be the first to be curtailed, and so on. Such action will be rescinded in reverse order according to the industry's energy-labor ratio.

b. First priority uses under 6 MCAR S 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

c. A firm within an industrial sector may be exempted from curtailment of fuel oil deliveries if it can demonstrate ~~it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove~~ that its energy-labor ratio is significantly below the industry average of the industrial sector because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR S 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for ~~industry grouping~~ industrial sector groupings and associated ~~S.I.C.~~ standard industrial classification codes will be compiled by the ~~agency~~ department and published biennially in the State Register during the month of October.

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

5. Actions available for implementation under ~~6 MCAR S 2.3114~~ A. and B. will remain available under ~~6 MCAR S 2.3114~~ C.

6 MCAR S 2.3120 Motor fuel emergency measures. Upon declaration

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

A. Public information measure.

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

2. Measure requirements.

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

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) ~~Agency~~ Estimates by the department of the shortfall of supplies expected for Minnesota;

(3) ~~Agency~~ Estimates by the department of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

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

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

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

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and

business-related motor fuel consumption in an energy supply emergency.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level with a total combined student-~~facility~~ faculty commuting population of 200 or more persons, including colleges, universities, and vocational schools.

(3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which reduces employee commuting and business-related motor fuel consumption.

c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the ~~agency~~ department upon request.

3. Employer plans may be submitted to the ~~agency~~ department for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under ~~6 MCAR § 2.3120~~ B.7.

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

5. Employer emergency motor fuel conservation plan.

a. Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during

an energy supply emergency. The ~~employee~~ employer may choose conservation strategies which achieve the required reduction.

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

c. Employers submitting self-styled emergency motor fuel conservation plans shall include:

(1) a calculation of their baseline consumption as defined in 6 MCAR S 2.3104 ~~D.~~ C.,

(2) the expected motor fuel savings attributed to ~~each~~ the selected strategies, and

(3) the plan elements described in ~~6 MCAR S 2.3120~~ B.7.

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

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

6. Employer motor fuel reduction strategies.

a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.

b. Category I Strategies:

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

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

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) ~~vehicle(s)~~ vehicles with a minimum carrying capacity of 20 passengers,

(b) a participation rate ~~equal to~~ of 50 percent of employees who live within a three mile radius of the work site, or the equivalent number, and

(c) at least one commuter check point at least five miles from the work site.

Employer-sponsored rideshare programs which fulfill the requirements of 6 MCAR § ~~2.3120~~ B.6.b. will be certified by the ~~agency~~ department. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in 6 MCAR § ~~2.3120~~ F. and will be exempt from the odd-even purchase restriction described in 6 MCAR § ~~2.3120~~ D.

d. Category II strategies:

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

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

(3) Purchase an electric or electric-hybrid vehicle.

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

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

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

(7) Institute flexible or staggered work hours.

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

7. An employer submitting an emergency motor fuel conservation plan according to ~~6 MCAR § 2.3120~~ B.5. or 6. shall identify in its plan the following:

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

b. Title of the person or persons responsible for supervising each plan component.

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

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

~~f.~~ e. The schedule for implementing chosen strategies; and

~~g.~~ f. The personnel (by title or position) that will

perform essential plant protection for the firm during a driving ban.

8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders the employer-based motor fuel conservation measure.

9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an energy supply emergency for motor fuel shall:

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

b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under ~~6 MCAR § 2.3120~~ B.5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:

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

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

~~(c)~~ (3) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of ~~6 MCAR § 2.3120~~ B.9.:

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

(2) Agriculture;

(3) Energy production;

(4) Telecommunications; and

(5) Sanitation services.

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

C. School conservation measure.

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

2. Applicability.

a. ~~Each~~ All school ~~district~~ districts, as defined ~~in~~ by the education code, Minn. Stat. ~~§§ 122.01 to 122.541 (1980)~~ chs. 120-129, and nonpublic ~~school~~ schools, as defined in Minn. Stat. S 123.932, subd. 3 ~~(1980)~~, which ~~has~~ have a combined student-staff population of 100 persons or more, ~~is~~ are required to comply with this measure.

b. The boards of all school districts, defined and empowered under the education code, Minn. Stat. chs. 120 ~~to~~ 129 ~~(1980)~~, and nonpublic school authorities, shall be responsible for submitting plans under this rule.

3. School boards shall submit to the ~~agency~~ department within 18 months after the effective date of these rules, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs ~~six~~ 6. or ~~seven of this rule~~ 7.

4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the ~~agency~~ department in one of the following forms:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.

5. School districts or nonpublic school associations

shall submit either a self-styled conservation plan as provided in paragraph 6. of this rule or a plan structured from the strategies provided in paragraph 7.

6. School emergency conservation plan: Option A.

a. School districts may submit a self-styled conservation plan including any conservation strategies that taken together would reduce baseline consumption by at least 15 percent during an energy supply emergency.

b. Self-styled conservation plans shall include:

(1) a calculation of the baseline consumption, defined in 6 MCAR S 2.3104 ~~D.~~ C.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in ~~6 MCAR S 2.3120~~ C.8.

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

d. The assistant ~~director~~ commissioner may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in ~~paragraph~~ 7. ~~of this rule.~~

7. School emergency conservation plan: Option B reduction strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School districts shall implement Category I strategies upon the selection of this measure by the Governor in an energy supply emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be

granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation; or

(d) are members of a carpool registered with the school rideshare coordinator.

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

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

c. Category II strategies. School districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the ~~agency~~ department.

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

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

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

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

(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I - strategy (2) has been chosen and applies when the Governor orders the school conservation measure.

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

8. Emergency motor fuel conservation plans submitted by school districts shall include:

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

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

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

9. School districts shall implement all or part of their plans as specified by the division director upon order of the Governor.

D. Odd-even purchase requirement measure.

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

2. Applicability.

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

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

c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following vehicles shall be exempt

from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR S 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in ~~6 MCAR S 3.2120~~ B.6.b.

c. ~~Vehicles being used for~~ Commercial ~~purposes~~ vehicles, as defined in 6 MCAR S 2.3104 ~~I.~~ H.

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

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

f. Motorcycles and mopeds.

g. Vehicles not licensed for highway use.

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

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

E. Minimum purchase requirement measure.

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

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than

the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five gallon minimum.

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

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

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

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

a. Vehicles being driven for first priority uses, as defined in 6 MCAR S 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

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

c. Out-of-state licensed vehicles.

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

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

F. Flag requirement for motor fuel retailers.

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

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. ~~The flag should be clearly visible from at least 100 yards in each direction of the station.~~

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

b. A yellow flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR S 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in 6 MCAR S ~~2.3120~~ B. A station flying a yellow flag shall not show preference in the sale of motor fuel to any priority vehicle.

c. A red flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR S 2.3104 R.

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

G. Motor fuel availability measure.

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

2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by Minn. Stat. S 116H.095 ~~and 6 MCAR SS 2.0101 to 2.0107~~.

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

H. Strict enforcement of posted highway speed limits.

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

2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR S 2.3110.

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

6 MCAR S 2.3121 Severe motor fuel emergency measures. When the ~~agency~~ department determines that the measures listed in 6 MCAR S 2.3120 ~~A. to H.~~, have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle permit-sticker measure.

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

2. Applicability.

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

b. A vehicle rented or leased for a period exceeding

seven days shall be considered owned by the lessee for purposes of this measure.

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

3. Exemptions.

a. Vehicles being driven for any first priority use defined in 6 MCAR S 2.3112;

b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;

c. ~~Motorcycle~~ Motorcycles and mopeds;

d. Short-term rental vehicles; and

e. Such other vehicles as the Governor may determine.

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

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

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

~~B. Recreational vehicle ban measure - Type I.~~

~~1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands for limited periods during an energy supply emergency.~~

~~2. Measure requirements for a Type I recreational vehicle~~

ban.

a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the DDVS, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy emergency. A Type I ban may, however, be renewed for the maximum 15-day period for each 30-day period the energy supply emergency remains in effect.

b. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, explaining the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

c. Exceptions. Parties may apply to the local energy conservation board for an exception to this measure. Upon a determination by the board that the applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt-sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.109 E.3.

C. Recreational vehicle ban measure - Type II.

1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters subject to the state's proprietary interest, shall be prohibited for a period

not to exceed 15 days during any 30-day declared energy supply emergency. A type II ban may, however, be renewed for the maximum 15-day period for each 30-day period an energy supply emergency remains in effect.

2. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the local energy conservation board. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3109. Upon a determination by the board that an applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.3109 E.3.

B. B. Speed limit reduction measure.

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

2. The Governor upon the advice of the agency department

shall order the Commissioner of Transportation to set a lower speed limit on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to Minn. Stat. S 169.141 ~~(1980)~~.

3. Violation of the maximum limit during an energy supply emergency for motor fuel shall carry the additional penalties as provided in 6 MCAR S 2.3110.

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

~~E.~~ C. Driving ban measure.

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

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

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

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

a. Emergency vehicles;

b. Sanitation services vehicles;

c. Aviation ground support vehicles;

d. Vehicles identified as required in 6 MCAR S 2.3120 B.7.~~g.~~ f. and used by employees in commuting for the purposes of

plant protection.

e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;

f. Individuals who require daily medical treatment; and

g. Out-of-state licensed vehicles.

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

6. The ~~agency~~ department will issue guidelines for identification of exempt vehicles prior to a driving ban.

AR0072
5/3/82

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Department of Energy, Planning and Development

Rule Numbers: 6 MCAR SS 2.3101-2.3121

Rule Title: Adopted Rules Relating to Reducing Demand and Increasing supply of Petroleum During an Energy Supply Emergency

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The Standard Industrial Classification Manual, 1972, the Office of Management and Budget of the Executive Office of the President

Standard Method for Distillation of Petroleum Products, The American Society for Testing and Materials

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
May 7 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mathews
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Paul M. Marinac
Paul M. Marinac

Title: Assistant Revisor

Phone: 296-0948

STATE OF MINNESOTA
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Rules as Proposed ? Post-hearing

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ENERGY AGENCY
DATA AND ANALYSIS DIVISION
PETROLEUM SUPPLY EMERGENCY CONSERVATION RULES

Petroleum Supply Emergency Rules governing the procedures and measures to be used to reduce demand and increase supply during an Energy Supply Emergency.

2.3101 Authority

These rules are authorized by Minn. Stat. § 116H.09 ~~(1980).~~ These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section ~~10~~212, 42 United States Code, Sections 851~~1~~2 ~~to 8541 (1979)~~(1976 and Supplement III 1979).

2.3102 Purpose

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

2.3103 Applicability of Rules. These rules shall apply:

A. generally, during a declared Energy Supply Emergency~~.~~ (see 6 MCAR § 2.3106);
B. generally, during a declared Energy Supply Alert (see 6 MCAR § 2.3105);
C. to the Minnesota Energy Agency when the Agency is preparing to recommend that an Energy Supply Alert or an Energy Supply Emergency be declared.

2.3104 Definitions. For purposes of 6 MCAR §§ 2.3101 - 2.3121 the terms defined in this rule have the meanings given them:

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means activities of establishments primarily engaged in food production, processing and sale classified under the industry code numbers

specified below as set forth in Standard Industrial Classification Manual, 1972 edition and the transport of goods and commodities for the below defined activities:

1. Major Group 01 - Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.
2. Major Group 02 - Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.
3. Major Group 07 - Agricultural Services, except for industry code nos. 0742 veterinary services for anminal specialties, 0752 animal specialty services, 0781 landscape counseling and planning, 0782 lawn and garden services, and 0783 ornamental shrub and tree services.
4. Major Group 09 - Fishing, Hunting, and Trapping.
5. Major Group 20 - Food and Kindred products, except for all industry codes under Group 208 Beverages, and 2065 candy and other confectionary products.
6. Group 514 - Groceries and Related Products (all industry codes found thereunder).
7. Group 515 - Farm Product Raw materials (all industry codes found thereunder).
8. Major Group 54 - Food Stores;

C. "Assistant Director" means the assistant director of the Minnesota Energy Agency who heads the Data and Analysis Division;

D. "Baseline Consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules~~;~~:
(1) the preceding 12 months, or
(2) The most recent 3-year average, or
(3) a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted;

E. "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

F. "Cargo, Freight and Mail Hauling ~~by Truck,~~ Including Newspaper Deliveries" means: motor carriers for hire, licensed and operating under Minn. Stat. §§ 221.~~0~~011 to 221.293, including independent owner/operators transporting goods under a lease or contract indicating their "for hire" status, where such lease can be produced by the driver-operator; local cartage carriers, licensed and operating under Minn. Stat. § 221.296; interstate motor carriers, operating in Minnesota under Minn. Stat. §§ 221.61 to 221.68; mail hauling by any motor vehicle owned and

operated by the U.S. Postal Service; ~~and~~ newspaper delivery by a motor vehicle identified as a newspaper carrier; and rail, barge and ship transportation of cargo or freight;

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

H. "Commercial Building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

I. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

J. "Company-owned Vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

K. "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

L. "County or Municipal Fuel Coordinator" means a person who has been appointed by the county board or city council to act as local fuel allocation resource person;

M. "Demand" means the quantity of products or services for which there are willing and able purchasers;

N. "Director" means the Director of the Minnesota Energy Agency;

O. "Division" means the Division of Emergency Services of the Department of Public Safety;

P. "Division Director" means the Director of the Division of Emergency Services;

Q. "Electric Utility" means an entity engaged in the generation, transmission, or distribution of electric energy for sale;

R. "Emergency Vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly owned law enforcement vehicle

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

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

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

U. "Energy Production" means transporation of energy or primary fuels by pipeline, transmission line, rail, barge or any motor carrier included in the definition of cargo, freight and mail hauling or other trucks ~~of energy or primary fuel~~ and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy;

V. "Environmental Standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential Government Services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings,

minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular Activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school;

Y. "Flexible Work Hours" or "Flextime" means a work system in which employees at an employment site have some discretion in their choice of working hours;

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel Oil" means a liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power including middle distillate oil or residual oil;

BB. "Health and Residential Care Services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 ~~(1980)~~, and ~~the Federal Aid Highways Act of 1956~~ 23 U.S.C. § 101 (1980);

DD. "Home Owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

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

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minn. Stat. § 168.27, Subds. 2 to 25 ~~(1980)~~;

GG. "Middle Distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling

point in the ASTM D86 standard distillation test falling between 370° and 700°F, except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in ~~VV-F-815C of~~ ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military Uses" means the activities of the armed forces of the United States and of the Minnesota department of military affairs, the office of adjutant general, military reservations, installations, armories, air bases, and facilities owned or controlled by the State for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minn. Stat. Chs. 190 to 193 ~~(1980)~~, known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

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

KK. "Motor Fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine;

LL. "Motor Vehicle Owner" means a person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period greater than seven days;

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

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

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

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

QQ. "Plant Protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes;

RR. "Prohibited Day" means the day for which a vehicle owner has been issued a permit-sticker, designating it a "no-driving" day for that vehicle;

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

TT. "Residual Fuel Oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

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

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

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

XX. "State Set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs ~~under Minn. Stat. § 116H.095 (1981)~~ according to Laws of 1981, Chapter 356, § 136;

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

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

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

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

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

DDD. "Vehicle Lessee" means a person, firm or corporation possessing a motor vehicle by lease.

2.3105 Energy Supply Alert. An Energy Supply Alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

A. An Energy Supply Alert may be declared when the Agency forecast indicates a reasonable likelihood that an energy supply shortage will occur within six months from the date of declaration.

B. The Director shall have sole responsibility for declaring an Energy Supply Alert.

2.3106 Energy Supply Emergency. An Energy Supply Emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

A. Minnesota Energy Agency. When the Agency's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the Director may recommend that an Energy Supply Emergency be declared.

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature has responsibility for declaring an energy supply emergency.

1. An Energy Supply Emergency automatically expires in 30 days, unless renewed by the Legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minn. Stat. §116H.09, Subd. 5 ~~(1980)~~.
2. Emergencies may be declared for all or part of the State and measures may be invoked accordingly. The declaration of emergency shall define the geographic area included in the energy supply emergency.
3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division, the Agency and the Secretary of State.

2.3107 Operating Organization During An Emergency

A. Energy Emergency Operating Center. During a declared energy supply emergency, the Division will set up an Energy Operating Center.

1. The Director of the Emergency Operating Center will be the Division Director. The Division Director shall oversee the implementation of the emergency plan.
2. The Emergency Operating Center will be located at a site designated by the Division Director and staffed by personnel from the Division, the Agency and other state agencies as deemed necessary by the Division Director and approved by the Governor.

B. Minnesota Energy Agency.

1. The Agency shall assist the Division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.
2. The Agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR § 2.3114 A. to

C., 6 MCAR § 2.3120 A. to H. and 6 MCAR § 2.3121 A. to ~~D~~E. capable of eliminating a fuel shortage.

3. The Assistant Director of the Agency shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR § 2.3120 B. or C.
4. The Director shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency Services.

1. The Division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.
2. The Division shall use the regional and local fuel coordinators to coordinate emergency operations throughout the State.
3. By January 1, 1983, the Division of Emergency Services shall develop an internal management and operations plan for implementing the measures contained in these rules.

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given the Governor in the Minnesota Civil Defense Act, Minn. Stat. Ch. 12.

2.3108 Local Energy Conservation Board

A. Each county and each city of the first class shall create a Local Energy Conservation Board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3114 A. and B., 2.3120 A. to H., except B. and C., and 2.3121 A. to E.

1. The Governor may order ~~the creation of~~ additional Local Energy Conservation Boards be established upon the Agency's determination that additional Boards are necessary to insure compliance with the timing provisions in 6 MCAR § 2.3109 C.
2. The appointment of additional Local Energy Conservation Boards and their conduct shall be governed by the procedures set forth in ~~6 MCAR §§ 2.3108 B. and 2.3109~~ B. and 6 MCAR § 2.3109.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county Local Energy Conservation Board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the ~~chair of the county commissioners is unable to fill~~ fuel coordinator is not able to sit on the Local Conservation Board ~~from this list,~~ an additional members shall be selected from the public. The county attorney shall advise the Local Energy Conservation Board.
2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal Local Energy Conservation Board which includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the ~~chair of the city council is unable to fill~~ city fuel coordinator is not able to sit on

the Local Conservation Board ~~from this list~~, an additional members shall be selected from the public. The city attorney shall advise the Local Energy Conservation Board.

C. Appointments to the Local Energy Conservation Board shall be ~~named~~made when an Energy Supply Alert or Energy Supply Emergency is declared. The appointer shall make reasonable efforts to avoid any conflict of interests in appointing the members of the Local Energy Conservation Board.

D. Three members shall constitute a quorum. The chair of the Local Energy Conservation Board shall be designated by the appointing authority.

2.3109 Appeals

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

1. An appeal of mandatory measures, except those described in 6 MCAR §§ 2.3114 C. 2. and 3. and 2.3120 B. and C., shall be heard by the Local Energy Conservation Board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.
2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a Hearing Examiner appointed by the Chief Hearing Examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.
3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR § 2.3114 C.3, or an order to adopt temporary rules for relaxation of environmental standards, 6 MCAR § 2.3114 C.2., and an appeal of priority status shall be heard by a Hearing Examiner appointed by the Chief Hearing Examiner and shall be directed to the State Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

~~4. An appeal from the Petroleum Supply Emergency Conservation Rules shall be decided by the Director and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.~~

B. Content of Appeal.

1. An appeal from an action taken pursuant to a declared Energy Supply Emergency or under authority of these rules, shall be in writing and signed by the appellant. The appeal shall state:
   a. full identification of appellant and where appellant can be located to receive notice of decision;
   b. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the action;
   c. the bases of the appeal, including the reasons the appellant believes the action to be unjust or unwise;
   d. the names and addresses of persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal;

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

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR § 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR § 2.3120 B.9.(a) employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and Procedures.

1. Within three working days after receipt of an appeal, the Local Conservation Board or Hearing Examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The Chair of the Local Conservation Board (or designate), or the Hearing Examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in 6 MCAR § 2.3109 A. A Local Energy Conservation Board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.
2. The "Rules of Procedure for Contested Cases" found at 9 MCAR §§ 2.201 - 2.222 shall govern the conduct of the appeals.
3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the Assistant Director as a party to the appeal.
4. A party may be represented by counsel.
5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under 6 MCAR § 2.3109 E.
6. Informal disposition of an appeal or any issue in an appeal may be made at any point in the proceeding by stipulation, agreed settlement, or consent order between the appellant and the Emergency Operating Center. In the case of employer and school district conservation plans, the Assistant Director shall have the power to informally dispose of an appeal by agreement or consent order.
7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the Emergency Operating Center to appear at a hearing of a Local Energy Conservation Board on an appeal from an emergency measure shall not constitute a default or bar the Director from reversing the Board's decision so long as the Director complies with the timing provisions in ~~6 MCAR § 2.3109~~ E. 3.
9. The Hearing Examiner or Local Energy Conservation Board may order a prehearing conference to be held at any time prior to a hearing, if a conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two working days before the date of the conference.
10. Appeals shall not be heard if received more than ten working days after the termination or expiration of the Energy Supply Emergency.

D. Hearings.
1. An appellant has a right to a hearing before the Local Energy Conservation Board, or the Hearing Examiner, whichever is appropriate. (See ~~6 MCAR § 2.3108~~ A.) At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.
2. The Local Energy Conservation Board or the Hearing Examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing ~~may~~shall bear the expense of preparing the transcript.
3. The Chair of the Local Energy Conservation Board and the Hearing Examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The Hearing Examiner or Local Conservation Board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.
1. No factual information or evidence which is not part of the record shall be considered by the Board or the Hearing Examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent facts.
2. Within two working days after the hearing is closed, the Local Conservation Board or the Hearing Examiner shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based. A copy of the recommendation shall be served by first class mail on all parties to the appeal and delivered to the Director with the whole record of the appeal. Service is effective on the postmark date.
3. The Director may affirm or reverse a decision of a Local Conservation Board or a Hearing Examiner or may remand the appeal for further hearing on specified parts. The Director must notify the appellant of an intent to reverse or remand a decision within two working days after receipt of the

recommended decision. The Director shall issue a written statement setting forth the grounds for reversing a recommended decision no later than five working days after receipt of the recommendation, and a copy of the statement shall be served on the appellant and sent to the Local Conservation Board or Hearing Examiner by first class mail. Failure of the Director to give timely notice of intent to reverse or remand a recommended decision will act to automatically affirm the recommended decision.

4. The appellant may seek judicial review of a final decision of the Director in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to 15.052 ~~(1980)~~.

2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 ~~(1980)~~.

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

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

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

2.3111 Priority uses of Fuel Oil

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR 2.3114 A. to C., are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before lower priority consumers.

B. Priority Uses. In an Energy Supply Emergency resulting from a shortage of fuel oil, highest priority uses are those essential for the health and safety of the citizens of the State. Uses within categories are not ranked by preference.

1. First priority fuel oil uses are:
   a. Health and residential care services;
   b. Residential heating;
   c. Passenger Transportation;
   d. Plant Protection;
   e. Emergency Vehicles;
   f. Telecommunications;
   g. Energy Production;
   h. Agriculture;
   i. Sanitation Services; and
   j. Essential Government Services.

2. Second priority fuel oil uses are those necessary to minimize the economic disruption of a fuel oil shortage. Second priority fuel oil uses are:
   a. Cargo and freight hauling, except for first priority uses as defined in ~~6 MCAR § 2.3111~~ B.1.
   b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR § ~~2.3111~~ 2.3120 A. to H. and 6 MCAR § 2.3121 A. to E.
3. Third priority uses are those not essential for the immediate health and safety of the citizens of the State. These include:
   a. Schools and religious institutions;
   b. Government, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;
   c. Commerce, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;
   d. Industry, except those services listed in ~~6 MCAR § 2.3111~~ B.1.
4. In an Energy Supply Emergency, suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available.
5. Vehicles considered to be transporting agricultural products must have the words 'first priority agricultural product' on their bill of lading or must be visibly transporting first priority agricultural products.
~~5~~6. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures ~~under 6 MCAR §§ 2.0101 to 2.0107~~ developed according to Laws of 1981 Chapter 365, § 136. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

2.3112 Priority Uses of Motor Fuel

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR §§ 2.3120 A. to H. and 2.3121 A. to E. are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

B. Priority Uses. In an Energy Supply Emergency resulting from a shortage of gasoline, diesel fuel, or other petroleum product used as a motor fuel, higher priority uses are those necessary for protecting the health and safety of the citizens of the State, and minimizing the economic disruption to the State's economy. Uses within priority categories are not ranked according to preference.
   1. First priority motor fuel uses are:
      a. Military Uses;
      b. Emergency Vehicles;
      c. Energy Production;
      d. Sanitation Services;
      e. Telecommunications;

f. Agriculture;
g. Passenger Transportation;
h. Cargo, Freight, and Mail Hauling by truck, including newspaper deliveries; and
i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR §§ 2.3120 A. to H., and 2.3121 A. to D., are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided ~~under Minn. Stat. § 116H.095 (1981)~~ by Laws of 1981 Chapter 356, § 136, if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures ~~under 6 MCAR §§ 2.0101 to 2.0107~~ promulgated according to Laws of 1981, Chapter 356, § 136. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR § 2.3110.

5. When a motor fuel is also used as a home heating fuel and that specific fuel is in short supply, the fuel oil priority rankings described in 6 MCAR § 2.3111 shall apply.

2.3113 Severe Shortage. If the Director determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority consumers of motor fuel or diesel fuel, then the Director shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

2.3114 Fuel Oil Emergency Measures. Upon declaration of an Energy Supply Emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary Measures:

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

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

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

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

a. ~~The Fuel Allocation Rules of Procedure (6 MCAR §§ 2.0101 - 2.0107)~~The procedures for state set-aside allocation (promulgated according to Laws of 1981, Chapter 365, § 136) will be used to allocate voluntarily released inventory.

b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR § 2.3111 B.

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

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

B. Mandatory Measures:

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

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Pool when power from non-petroleum-fired generating facilities is available from the Pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

5. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

C. When the Agency determines that actions listed in 6 MCAR § 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62°F during the day where such action does not violate Minnesota Rule MOSHC 41(f)~~.~~, and 50°F at night or during unoccupied periods.

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

3. Delivery of fuel oil supplies to ~~specific industries~~ an industrial sector, including commerce and government, shall be ordered to be curtailed

according to the following criteria. A curtailment order shall be in writing signed by the Division Director, and shall be delivered by registered mail to firms in the ~~industry~~ industrial sector and area suppliers.

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

b. First priority uses under 6 MCAR § 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

c. A firm within an industrial sector may be exempted from curtailment of fuel oil deliveries if it can demonstrate ~~it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove~~ that its energy-labor ratio is significantly below the industry average of the industrial sector because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR § 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for ~~industry~~ industrial sector grouping and associated S.I.C. codes will be compiled by the Agency and published biennally in the State Register during the month of October.

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

5. Actions available for implementation under 6 MCAR § 2.3114 A. and B. will remain available under 6 MCAR § 2.3114 C.

2.3120 Motor Fuel Emergency Measures

Upon declaration of an Energy Supply Emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. Public Information Measure.

1. This measure is intended to conserve motor fuel through voluntary public conservation in response to a declared energy emergency, and through broad public application of vehicle efficiency improvements and ridesharing promoted through public service announcements, conservation demonstrations, and dissemination of energy-related literature.
2. Measure requirements.
   a. The Emergency Operating Center shall prepare and issue news releases to news media throughout the state containing at least the following:
      (1) The specific cause or causes of the gasoline or petroleum shortage;
      (2) Agency estimates of the shortfall of supplies expected for Minnesota;
      (3) Agency estimates of the probable duration of the energy emergency; and
      (4) A list of specific actions taken and measures imposed to reduce shortage.
   b. Owners and operators of diesel-powered automobiles may be requested to substantially reduce or discontinue use of their diesel vehicles during severe fuel oil shortages.
   c. The Emergency Operating Center shall make available to large worksites, schools and local energy coordinators, literature which relates vehicle fuel economy to driving practices and vehicle maintenance.
3. The Emergency Operating Center shall provide public service announcements to the media which emphasize the importance of individual and corporate efforts in conserving motor fuel and provide specific conservation tips.

B. Employer-based Motor Fuel Conservation Measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an Energy Supply Emergency.
2. Applicability.
   a. The following employers are required to comply with the provisions of this measure:
      (1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.
      (2) All educational institutions at the post-secondary school level with a total combined student-facility commuting population of 200 or more persons, including colleges, universities, and vocational schools.
      (3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which reduces employee commuting and business-related motor fuel consumption.
c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the Agency upon request.

3. Employer plans may be submitted to the Agency for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under 6 MCAR § 2.3120 B. 7.
4. Employers may choose to submit energy conservation plans to the Agency before the declaration of an energy emergency in the form and manner provided in paragraphs 5 or 6.
5. Employer Emergency Motor Fuel Conservation Plan
   a. Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during an Energy Supply Emergency. The employee may choose conservation strategies which achieve the required reduction.
   b. Employer plans must contain conservation strategies which taken together would reduce an employer's baseline consumption by 15 percent.
   c. Employers submitting self-styled emergency motor fuel conservation plans shall include:
   (1) a calculation of their baseline consumption as defined in 6 MCAR § 2.3104 D.,
   (2) the expected motor fuel savings attributed to ~~each~~ the selected strategies, and
   (3) the plan elements described in 6 MCAR § 2.3120 B. 7.
   d. Employers will be credited for travel reduction actions taken prior to submission of their plans that yield ongoing fuel savings.
   e. The Assistant Director may decline to certify an employer plan submitted under this paragraph which fails to empirically support the level of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in paragraph 6.
6. Employer Motor Fuel Reduction Strategies
   a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.
   b. Category I Strategies:
      (1) Establish a carpool program for employees. An employer rideshare program may be independently-sponsored or provided in conjunction with a local or community ridesharing program. A rideshare program must minimally provide for~~;~~: promotion of ridesharing through company bulletins, advertisements, and policies; the capability to

match employees to carpools through rideboards, computer listings, or other methods which provide information necessary to match rideshare applicants; and a rideshare coordinator and who will be responsible for the sponsored program.

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

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) vehicle(s) with a minimum carrying capacity of 20 passengers,

(b) a participation rate equal to 50 percent of employees who live within a three mile radius of the worksite, or an equivalent number, and

(c) at least one commuter check point at least five miles from the worksite.

Employer-sponsored rideshare programs which fulfill the requirements of ~~6 MCAR § 2.3120~~ B.6.b. will be certified by the Agency. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in ~~6 MCAR § 2.3120~~ F. and will be exempt from the odd-even purchase restriction described in ~~6 MCAR § 2.3120~~ D.

d. Category II Strategies:

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

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

(3) Purchase an electric or electric-hybrid vehicle.

(4) Promote transit use by employees through direct sale of transit passes at the worksite, fare subsidies, or display of direct and connecting routes serving the worksite.

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

(6) Participate with a rideshare agency to provide jitney service to persons requesting travel to a destination on or near the route taken for business purposes. An employer-owned or employee-owned vehicle used for business purposes may be used for the jitney service.
(7) Institute flexible or staggered work hours.
(8) Participate in an independently-sponsored truck and bus fuel economy project which offers both energy-conscious-driver education and instruction on fuel-economizing vehicle maintenance and accessories. Employers choosing this strategy must maintain a fleet of a least ten vehicles used for cargo and freight hauling.

7. An employer submitting an emergency motor fuel conservation plan according to ~~6 MCAR § 2.3120~~ B. 5. or 6. shall identify in its plan the following:
   a. The carpool, vanpool or subscription bus program sponsored or subscribed to, and an estimate of the number of employees currently using and expected to use such services.
   b. Title of the person or persons responsible for supervising each plan component.
   c. The internal media to be used to inform employees of the employer's program;
   d. The administrative assistance and inhouse resources that the employer will provide for employee ridesharing services;
   ~~f~~e. The schedule for implementing chosen strategies; and
   ~~g~~f. The personnel (by title or position) that will perform essential plant protection for the firm during a driving ban.
8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders the employer-based motor fuel conservation measure.
9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an Energy Supply Emergency for motor fuel shall:
   a. Submit to the Agency within fifteen days after declaration of an Energy Supply Emergency for motor fuel a plan to reduce baseline consumption by at least fifteen percent over a period of three months or longer, or
   b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under 6 MCAR § 2.3120 B. 5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:
   ~~(a)~~(1) Business- or employment-related activity can be performed at an employer's or employee's place of residence;
   ~~(b)~~(2) Activities required in certain industrial processes must operate continuously to prevent long term or irreparable damage to a system or process; and
   ~~(c)~~(3) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of 6 MCAR § 2.3120 B. 9.:
(1) Public or private services essential to public health and safety such as health and residential care facilities, medical facilities, law enforcement activities, and emergency services;
(2) Agriculture;
(3) Energy Production;
(4) Telecommunications; and
(5) Sanitation Services.

C. School Conservation Measure.

1. The purpose of this measure is to conserve motor fuel by requiring schools to adopt strategies to reduce student commuting and school-sponsored activities in an Energy Supply Emergency.
2. Applicability.
a. ~~Each~~All school districts, as defined ~~in~~ by the Education Code Minn. Stat. ~~§§ 122.01 to 122.541 (1980)~~ Chs. 120 to 129, and nonpublic schools, as defined in Minn. Stat. § 123.932, subd. 3 ~~(1980)~~, which ha~~s~~ve a combined student-staff population of 100 persons or more, is required to comply with this measure.
b. The Boards of all school districts, defined and empowered under the Education Code, Minn. Stat. Chs. 120 to 129 ~~(1980)~~, and non-public school authorities, shall be responsible for submitting plans under this rule.
3. School Boards shall submit to the Agency within 18 months after the effective date of these rules, or within 45 days after declaration of an Energy Supply Emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs six or seven of this rule.
4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the Agency in one of the following forms:
a. A school-specific plan, or
b. A school association plan that contains strategies adopted by member schools, or
c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.
5. School districts or nonpublic school associations shall submit either a self-styled conservation plan as provided in paragraph 6 of this rule or a plan structured from the strategies provided in paragraph 7.
6. School Emergency Conservation Plan: Option A.
a. School Districts may submit a self-styled conservation plan including any conservation strategies that taken together would reduce baseline consumption by at least 15 percent during an Energy Supply Emergency.
b. Self-styled conservation plans shall include:
(1) a calculation of the baseline consumption, defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in 6 MCAR § 2.3120 C. 8.

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

d. The Assistant Director may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in paragraph 7 of this rule.

7. School Emergency Conservation Plan: Option B Reduction Strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School Districts shall implement Category I strategies upon the selection of this measure by the Governor in an Energy Supply Emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation, or

(d) are members of a carpool registered with the school rideshare coordinator.

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

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

c. Category II strategies. School Districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the Agency.

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

(2) Adopt and enforce a parking management strategy which gives preferential parking to high occupancy vehicles in student parking lots or requires fees for parking on school grounds.
(3) Provide indoor or sheltered bicycle parking with a capacity for at least five percent of the student body.
(4) Eliminate on-the-road driver education for the period of the emergency.
(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I - strategy (2) has been choosen and applies when the Governor orders the School Conservation Measure.
(6) Participate in an independently-sponsored school bus fuel economy program.

8. Emergency Motor Fuel Conservation Plans submitted by school districts shall include:
   a. the title of the person or position responsible for implementing the plan during an Energy Supply Emergency for motor fuel;
   b. the internal media to be used to inform school staff and students of a school district program measure; and
   c. the implementation schedule for category II strategies (1) (2), (3) and (6).
9. School Districts shall implement all or part of their plans as specified by the Division Director upon order of the Governor.

D. Odd-Even Purchase Requirement Measure.

1. The purpose of the odd-even purchase requirement is to conserve motor fuel and facilitate the orderly purchase of motor fuel by alternating the days of purchase eligibility.
2. Applicability.
   a. Retail sales and purchases of motor fuel shall be restricted to even-numbered days of the month for persons in possession of vehicles whose license plate numbers end in one of the even digits 0, 2, 4, 6, 8; and to odd-numbered days of the month for persons in possession of vehicles whose license plate numbers end in the odd digits 1, 3, 5, 7, and 9.
   b. Specialty and personalized license plates which display no ending numberal are deemed to be "odd" for purposes of the purchase requirement.
   c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.
3. Exemptions. The following vehicles shall be exempt from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.
   a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in ~~6 MCAR § 3.2120~~ B. 6. b.

c. ~~Vehicles being used for commercial purposes~~ Commercial Vehicles, as defined in 6 MCAR § 2.3104 I.

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

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

f. Motorycycles and mopeds.

g. Vehicles not licensed for highway use.

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

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

E. Minimum Purchase Requirement Measure.

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

2. Measure requirements.
Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five gallon minimum.

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

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

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

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

a. Vehicles being driven for first priority uses, as defined in 6 MCAR § 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

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

c. Out-of-state licensed vehicles.

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

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

F. Flag Requirement for Motor Fuel Retailers.

1. The purposes of this measure are to signal to motorists availability of motor fuel for purchase at stations through the display of flags and to permit retailers to limit sales to priority users only.
2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. ~~The flag should be clearly visible from at least 100 yards in each direction of the station.~~

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

   b. A Yellow Flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in 6 MCAR § 2.3120 B. A station flying a yellow flag shall not show preference in the sale of motor fuel to any priority vehicle.

   c. A Red Flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR § 2.3104 R.
3. Flags shall be square and at least two feet by two feet but no greater than three feet by three feet in size; and shall be made of cloth or plastic. Flags shall be located on the boulevard or near enough to the street to allow visability of at least 100 yards in each direction of the station.

G. Motor Fuel Availability Measure.

1. The purpose of this measure is to assure that motor fuel is available for purchase at key locations throughout the state 24 hours a day and that these locations and their hours of operation are locally publicized.
2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by ~~Minn. Stat. § 116H.095 and 6 MCAR §§ 2.0101 to 2.0107~~ Laws of 1981, Chapter 356, § 136.
3. The Emergency Operating Center shall publicize the location of the stations participating in the availability program in local newspapers. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Department of Economic Development's Tourist Information Center, both of which provide motor fuel availability information.

H. Strict Enforcement of Posted Highway Speed Limits.

1. The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit on state highways.
2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR § 2.3110.
3. The Governor shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement through personnel assignments and increased road surveillance.

2.3121 Severe Motor Fuel Emergency Measures. When the Agency determines that the measures listed in 6 MCAR § 2.3120 A. to H., have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle Permit-Sticker Measure

1. This measure is intended to conserve motor fuel by prohibiting the use of vehicles for one day per week.
2. Applicability.
   a. Vehicle owners shall apply to the Department of Public Safety for a no-driving-day-designation permit-sticker. The applicant may select any day (Monday through Sunday) as the no-driving-day for his/her vehicle but must choose the same day for all vehicles owned. The owner must prominently display the sticker on each vehicle owned and driven during the term of this measure.
   b. A vehicle rented or leased for a period exceeding seven days shall be considered owned by the lessee for purposes of this measure.
   c. Upon the effective date of the vehicle permit-sticker requirement, all Minnesota-licensed motor vehicles subject to the requirement must display a permit-sticker in the lower right-hand corner of the front windshield.
3. Exemptions.
   a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112;
   b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;
   c. Motorcycles and mopeds;
   d. Short-term rental vehicles; and
   e. Such other vehicles as the Governor may determine.
4. Vehicle owners operating a motor vehicle under one of the qualifying exemptions listed above must apply to the Division of Driver and Vehicle Services (DDVS) of the Department of Public Safety for an exempt sticker. Exempt stickers issued by the DDVS must be prominently displayed on the vehicle for which the exempt permit was issued.
5. Vehicle rental agencies must apply for "exempt" stickers for vehicles rented for periods less than one week. Upon approval of a rental agency's application, DDVS will issue exempt stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven days must be registered by the lessee.

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

~~B. Recreational Vehicle Ban Measure -- Type I.~~

~~1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands for limited periods during an Energy Supply Emergency.~~

~~2. Measure requirements for a Type I recreational vehicle ban.~~

~~a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the DDVS, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy emergency. A Type I ban may, however, be renewed for the maximum 15-day period for each 30-day period the energy supply emergency remains in effect.~~

~~b. The Division Director shall issue a statement to news media at least seven days prior to the effective date of the ban, explaining the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The Division Director's statement is to receive widest possible distribution to inform the public of the ban.~~

~~c. Exceptions. Parties may apply to the Local Energy Conservation Board for an exception to this measure. Upon a determination by the Board that the applicant should be granted an exception to the ban, the Board shall recommend to the Division Director that an exempt sticker be issued to the applicant. The Division Director, or designate, shall deliver to the applicant within three days after receipt of the Local Conservation Board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The Division Director, or designate, shall not deliver an exempt sticker to the applicant, if the Director serves notice of his/her intent to reverse the recommendation of the Local Energy Conservation Board as provided in 6 MCAR § 2.109 E. 3.~~

~~C. Recreational Vehicle Ban Measure -- Type II.~~

~~1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters subject to the State's proprietary interest, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum 15 day period for each 30-day period an energy supply emergency remains in effect.~~

~~2. The Division Director shall issue a statement to news media at least seven days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for~~

~~obtaining an exception to the measure. The Division Director's statement is to receive widest possible distribution to inform the public of the ban.~~

~~3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the Local Energy Conservation Board. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3109. Upon a determination by the Board that an applicant should be granted an exception to the ban, the Board shall recommend to the Division Director that an exempt sticker be issued to the applicant. The Division Director, or designate, shall deliver to the applicant within three days after receipt of the Local Conservation Board's favorable recommendation, and exempt sticker which must be displayed for the duration of the ban. The Division Director, or designate, shall not deliver an exempt sticker to the applicant, if the Director serves notice of his/her intent to reverse the recommendation of the Local Energy Conservation Board as provided in 6 MCAR § 2.3109 E. 3.~~

~~D~~B. Speed Limit Reduction Measure.

1. This measure is intended to conserve motor fuel by reducing the maximum speed limit on all highways in Minnesota.
2. The Governor upon the advice of the Agency shall order the Commissioner of Transportation to set a lower speed limit on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an Energy Supply Emergency pursuant to Minn. Stat. § 169.141 (1980).
3. Violation of the maximum limit during an Energy Supply Emergency for motor fuel shall carry the additional penalities as provided in 6 MCAR § 2.3110.
4. The Governor may request State, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through personnel assignments and increased road surveillance efforts.

EC. Driving Ban Measure.

1. This measure is intended to conserve motor fuel by prohibiting the use and operation of all non-exempt motor vehicles for a specified 24-hour period.
2. Upon the Agency's determination that a 24 hr. driving ban is necessary to reduce the demand for motor fuel, the Governor may order an emergency driving ban. Upon the Governor's order, the Division Director shall issue the order and a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall state the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five days prior to the imposition of the driving ban.

3. It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of driving ban.
4. Exemptions. The following motor vehicle uses shall be exempt from a driving ban:
    a. Emergency vehicles;
    b. Sanitation services vehicles;
    c. Aviation ground support vehicles;
    d. Vehicles identified as required in 6 MCAR § 2.3120 B.7.~~g~~f. and used by employees in commuting for the purposes of plant protection.
    e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;
    f. Individuals who require daily medical treatment; and
    g. Out-of-state licensed vehicles.
5. Any vehicle registered and licensed by the State of Minnesota and operated during a driving ban shall prominently display a sticker or card which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, for example, police, fire, ambulance, or aviation ground support vehicles.
6. The Agency will issue guidelines for identification of exempt vehicles prior to a driving ban.

DEPARTMENT OF ENERGY PLANNING AND DEVELOPMENT AG copy

~~ENERGY AGENCY~~
ENERGY
~~DATA AND~~ ANALYSIS DIVISION

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.3102
.3103

PETROLEUM SUPPLY EMERGENCY CONSERVATION RULES

Petroleum Supply Emergency Rules governing the procedures and measures to be used to reduce demand and increase supply during an Energy Supply Emergency.

2.3101 Authority

These rules are authorized by Minn. Stat. § 116H.09 ~~(1980)~~. These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section ~~10~~212, 42 United States Code, Sections 851~~1~~2 ~~to 8541 (1979)~~(1976 and Supplement III 1979).

2.3102 Purpose

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

2.3103 Applicability of Rules. These rules shall apply:

A. generally, during a declared Energy Supply Emergency.

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(see 6 MCAR § 2.3106);

B. generally, during a declared Energy Supply Alert (see 6 MCAR § 2.3105);

C. to the ~~Minnesota Energy Agency~~ Minnesota Department of Energy Planning and Development when the ~~Agency~~ Department is preparing to recommend that an Energy Supply Alert or an Energy Supply Emergency be declared.

2.3104 Definitions. For purposes of 6 MCAR §§ 2.3101 - 2.3121 the terms defined in this rule have the meanings given them:

P. "Department means the Minnesota Department of Energy, Planning and Development;

~~A.~~ ~~"Agency" means the Minnesota Energy Agency;~~

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

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1. Major Group 01 - Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.

2. Major Group 02 - Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.

3. Major Group 07 - Agricultural Services, except for industry code nos. 0742 veterinary services for an~~imi~~mal specialties, 0752 animal specialty services, 0781 landscape counseling and planning, 0782 lawn and garden services, and 0783 ornamental shrub and tree services.

4. Major Group 09 - Fishing, Hunting, and Trapping.

Insert P. on Page 5.

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

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

7. Group 515 - Farm Product Raw materials (all industry codes found thereunder).

8. Major Group 54 - Food Stores;

B. "Assistant ~~Director~~ Commissioner" means the assistant director of the Minnesota Department of Energy, Planning and Development Energy Agency who heads the Data and Energy Analysis Division;

C. "Baseline Consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules~~;~~:

? what constitutes a "school" in this instance

(1) the preceding 12 months, or

(2) The most recent 3-year average, or

(3) a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted;

D. ~~E.~~ "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

E. ~~F.~~ "Cargo, Freight and Mail Hauling ~~by Truck~~, Including Newspaper Deliveries" means: motor carriers for hire,

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licensed and operating under Minn. Stat. § 221.0011 to 221.293, including independent owner/operators transporting goods under a lease or contract indicating their "for hire" status, where such lease can be produced by the driver-operator; local cartage carriers, licensed and operating under Minn. Stat. § 221.296; interstate motor carriers, operating in Minnesota under Minn. Stat. §§ 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier; trucks that have truck bodies specifically designed for cargo and freight hauling and are commercial vehicles as defined in 6 MCAR § 2.3104 I; and rail, barge and ship transportation of cargo or freight;

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

G. "Commercial Building" means a building all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

H. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

I. ~~H~~ "Company-owned Vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

J. ~~K~~ "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

K. ~~L~~ "County or Municipal Fuel Coordinator" means a person who has been appointed by the county board or city council to act as local fuel allocation resource person;

L. ~~M~~ "Demand" means the quantity of products or services for which there are willing and able purchasers;

M. ~~N.~~ "~~Director~~ Commissioner" means the ~~Director~~ Commissioner of the Minnesota ~~Energy~~ Department of Energy, Planning and Development; ~~Agency;~~

N. ~~O.~~ "Division" means the Division of Emergency Services of the Department of Public Safety;

O. ~~P.~~ "Division Director" means the Director of the Division of Emergency Services;

See Page 2., Old A. is now P.

P. → Q. "Electric Utility" means an entity engaged in the generation, transmission, or distribution of electric energy for sale;

R. "Emergency Vehicle" means any of the following vehicles: a vehicle of a fire department or fire fighting unit; a publicly owned law enforcement vehicle or privately-owned vehicle used by a law enforcement officer for police work under agreement, express or implied, with the local authority; a vehicle of a licensed emergency ambulance service, whether publicly or privately owned; an emergency vehicle of a municipality, department or public service corporation

including emergency services vehicles approved by the chief of police of a municipality, the county sheriff, or the Division Director; a vehicle of a utility or contractor while performing emergency repairs or maintenance for electric, water, waste treatment, natural gas or telecommunications utilities and end-user primary services, and petroleum, petroleum products or natural gas pipelines or facilities; a vehicle of the State, county, municipal, or other subdivision of government used for snow removal, emergency road and traffic signal repair or search and rescue operations, or privately-owned vehicles of a contractor under contract to perform these services;

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

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

include schools, colleges ?

U. "Energy Production" means transporation <u>of energy or primary fuels</u> by pipeline, transmission line, rail, barge or <u>any</u> motor carrier <u>included in the definition</u>

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of cargo, freight and mail hauling or other trucks ~~of energy or primary fuel~~ and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy; HE 28

V. "Environmental Standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential Government Services" means court and judicial activities, jails and prisons, meetings of duly elected political officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular Activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school;

Y. "Flexible Work Hours" or "Flextime" means a work system in which employees at an employment site have some discretion in their choice of working hours;

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel Oil" means a liquid or liquefiable petroleum product with a flashpoint above 100°F which is used

to generate heat or power including middle distillate oil or residual oil;

BB. "Health and Residential Care Services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 ~~(1980)~~, and ~~the Federal Aid Highways Act of 1956~~ 23 U.S.C. § 101 (1980);

DD. "Home Owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

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

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minn. Stat. § 168.27, Subds. 2 to 25 ~~(1980)~~;

GG. "Middle Distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test

falling between 370° and 700°F, except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in ~~VV-F-815C of~~ ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military Uses" means the activities of the armed forces of the United States and of the Minnesota department of military affairs, the office of adjutant general, military reservations, installations, armories, air bases, and facilities owned or controlled by the State for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minn. Stat. Chs. 190 to 193 ~~(1980)~~, known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

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

KK. "Motor Fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine;

LL. "Motor Vehicle Owner" means a person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period greater than seven days;

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

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

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

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

QQ. "Plant Protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes;

RR. "Prohibited Day" means the day for which a vehicle owner has been issued a permit-sticker, designating it

a "no-driving" day for that vehicle;

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

TT. "Residual Fuel Oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

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

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

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

XX. "State Set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs ~~under Minn. Stat. § 116H.095 (1981)~~ according to Laws of 1981, Chapter 356, § 136;

✓ not necessary

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

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

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

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

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

DDD. "Vehicle Lessee" means a person, firm or corporation possessing a motor vehicle by lease.

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2.3105 Energy Supply Alert. An Energy Supply Alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

A. An Energy Supply Alert may be declared when the Department Agency forecast indicates a reasonable likelihood that an energy supply shortage will occur within six months from the date of declaration.

B. The Commissioner Director shall have sole responsibility for declaring an Energy Supply Alert.

2.3106 Energy Supply Emergency. An Energy Supply Emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

A. Minnesota Department of Energy Planning and Development Energy Agency. When the Agency's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the Commissioner Director may recommend that an Energy Supply Emergency be declared by submitting a written statement to the Executive Council or Legislature. The statement shall include the factors the Commissioner Agency considered in reaching its decision to recommend that an Emergency be declared and the reasons for its recommendation. HE 29

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature has responsibility for declaring an energy supply emergency.

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1. An Energy Supply Emergency automatically expires in 30 days, unless renewed by the Legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minn. Stat. §116H.09, Subd. 5 ~~(1980)~~.

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

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division, the Agency/Department and the Secretary of State.

2.3107 Operating Organization During An Emergency

A. Energy Emergency Operating Center. During a declared energy supply emergency, the Division will set up an Energy Operating Center.

1. The Director of the Emergency Operating Center will be the Division Director. The Division Director shall oversee the implementation of the emergency plan.

2. The Emergency Operating Center will be located at a site designated by the Division Director and staffed by personnel from the Division, the Agency/Department and other state agencies as

deemed necessary by the Division Director and approved by the Governor.

B. Minnesota Energy Agency. Department of Energy Planning and Development.

1. The Agency shall assist the Division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

2. The Agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR § 2.3114 A. to C., 6 MCAR § 2.3120 A. to H. and 6 MCAR § 2.3121 A. to DE. capable of eliminating a fuel shortage.

3. The Assistant Director of the Agency shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR § 2.3120 B. or C.

4. The Director shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency Services.

1. The Division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

2. The Division shall use the regional and local fuel coordinators to coordinate emergency operations throughout the State.

3. By January 1, 1983, the Division of Emergency Services shall develop an internal management and operations plan for implementing the measures contained in these rules.

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given

the Governor in the Minnesota Civil Defense Act, Minn. Stat. Ch. 12.

2.3108 Local Energy Conservation Board

A. Each county and each city of the first class shall create a Local Energy Conservation Board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3114 A. ~~and~~ B., C.1 and 4., 2.3120 A. to H., except B. and C., and 2.3121 A. to E.

1. The Governor may order ~~the creation of~~ additional Local Energy Conservation Boards to be established upon the Agency's determination that additional Boards are necessary to insure compliance with the timing provisions in 6 MCAR § 2.3109 C.

2. The appointment of additional Local Energy Conservation Boards and their conduct shall be governed by the procedures set forth in ~~6 MCAR §§ 2.3108 B. and 2.3109 B.~~ and 6 MCAR § 2.3109.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county Local Energy Conservation Board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the ~~chair of the~~ county ~~commissioners is unable to fill~~ fuel coordinator is not able to sit on the Local Conservation Board ~~from this list~~, an additional members shall be selected from the public. The county attorney shall advise the Local Energy Conservation Board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal Local Energy Conservation Board which

where is the designation?

includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the ~~chair of the city council is unable to fill~~ city fuel coordinator is not able to sit on the Local Conservation Board ~~from this list~~, an additional members shall be selected from the public. The city attorney shall advise the Local Energy Conservation Board.

C. Appointments to the Local Energy Conservation Board shall be ~~named~~made when an Energy Supply Alert or Energy Supply Emergency is declared. The appointer shall make reasonable efforts to avoid any conflict of interests in appointing the members of the Local Energy Conservation Board.

D. Three members shall constitute a quorum. The chair of the Local Energy Conservation Board shall be designated by the appointing authority.

2.3109 Appeals

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

1. An appeal of mandatory measures, except those described in 6 MCAR §§ 2.3114 C. 2. and ~~3.~~ and 2.3120 B. and C., shall be heard by the Local Energy Conservation Board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a Hearing Examiner appointed by the Chief Hearing Examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR § 2.3114 C.3, or an order to adopt temporary rules for relaxation of environmental standards, 6 MCAR § 2.3114 C.2., and an appeal of priority status shall be heard by a Hearing Examiner appointed by the Chief Hearing Examiner and shall be directed to the ~~State~~ Office of Administrative Hearings, ~~Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104~~ Summit National Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415.

~~4. An appeal from the Petroleum Supply Emergency Conservation Rules shall be decided by the Director and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.~~

B. Content of Appeal.

1. An appeal from an action taken pursuant to a declared Energy Supply Emergency or under authority of these rules, shall be in writing and signed by the appellant. The appeal shall state:

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

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

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

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

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

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR § 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR § 2.3120 B.9.(a) employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and Procedures.

1. Within three working days after receipt of an appeal, the Local Conservation Board or Hearing Examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The Chair of the Local Conservation Board (or designate), or the Hearing Examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in 6 MCAR § 2.3109 A. A Local Energy Conservation Board may convene at any location within its

jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. ~~The "Rules of Procedure for Contested Cases" found at 9 MCAR §§ 2.201 - 2.222 shall govern the conduct of the appeals~~ Appeals shall be governed by the Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052 and the rules of the Office of Administrative Hearings (9 MCAR §§ 2.201-2.299), except that during an energy supply emergency the provisions of 6 MCAR § 2.3109 shall supercede the above-cited rules wherever the two conflict with one another. HE 31

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the Assistant Director Commissioner as a party to the appeal.

4. A party may be represented by counsel.

5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under 6 MCAR § 2.3109 E.

6. Informal disposition of an appeal or any issue in an appeal may be made at any point in the proceeding by stipulation, agreed settlement, or consent order between the appellant and the Emergency Operating Center. In the case of employer and school district conservation plans, the Assistant Director Commissioner shall have the power to informally dispose of an appeal by agreement or consent order.

7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the Emergency Operating Center to appear at a hearing of a Local Energy Conservation Board on an appeal from an emergency measure shall not constitute a default or bar the Commissioner Director from reversing the Board's decision so long as the Commissioner Director complies with the timing provisions in ~~6 MCAR § 2.3109~~ E. 3.

9. The Hearing Examiner or Local Energy Conservation Board may order a prehearing conference to be held at any time prior to a hearing, if a conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two working days before the date of the conference.

10. Appeals shall not be heard if received more than ten working days after the termination or expiration of the Energy Supply Emergency.

D. Hearings.

1. An appellant has a right to a hearing before the Local Energy Conservation Board, or the Hearing Examiner, whichever is appropriate. (See ~~6 MCAR § 2.3108~~ A.) At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The Local Energy Conservation Board or the Hearing Examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing ~~may~~shall bear the expense of preparing the transcript.

3. The Chair of the Local Energy Conservation Board and the Hearing Examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The Hearing Examiner or Local Conservation Board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the Board or the Hearing Examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent facts.

2. Within two working days after the hearing is closed, the Local Conservation Board or the Hearing Examiner shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based. A copy of the recommendation shall be served by first class mail on all parties to the appeal and delivered to the Director with the whole record of the appeal. Service is effective on the postmark date.

3. The Director may affirm or reverse a decision of a Local Conservation Board or a Hearing Examiner or may remand the appeal for further hearing on specified parts. The Director must notify the appellant of an intent to reverse or remand a decision within two working days after receipt of the recommended decision. The Director shall issue a written statement setting forth the grounds for reversing a recommended decision no later than five working days after receipt of the recommendation, and a copy of the statement

shall be served on the appellant and sent to the Local Conservation Board or Hearing Examiner by first class mail. Failure of the Director to give timely notice of intent to reverse or remand a recommended decision will act to automatically affirm the recommended decision.

4. The appellant may seek judicial review of a final decision of the Director in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to 15.052 ~~(1980)~~.

2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 ~~(1980)~~.

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

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

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

2.3111 Priority uses of Fuel Oil

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR 2.3114 A. to C.,

are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before lower priority consumers.

B. Priority Uses. In an Energy Supply Emergency resulting from a shortage of fuel oil, highest priority uses are those essential for the health and safety of the citizens of the State. Uses within categories are not ranked by preference.

1. First priority fuel oil uses are:

a. Health and residential care services;

b. Residential heating;

c. Passenger Transportation;

d. Plant Protection;

e. Emergency Vehicles;

f. Telecommunications;

g. Energy Production;

h. Agriculture;

i. Sanitation Services; and

j. Essential Government Services.

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

a. Cargo and freight hauling, except for first priority uses as defined in ~~6 MCAR § 2.3111~~ B.1.

b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR § ~~2.3111~~ 2.3120 A. to H. and 6 MCAR § 2.3121 A. to E.

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

a. Schools and religious institutions;

b. Government, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;

c. Commerce, except those services listed in ~~6 MCAR § 2.3111~~ B.1.;

d. Industry, except those services listed in ~~6 MCAR § 2.3111~~ B.1.

4. In an Energy Supply Emergency, suppliers shall be requested to deliver fuel oil to higher priority consumers before lower priority consumers, where no practicable substitute fuels are available.

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

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~~5~~6. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures ~~under 6 MCAR §§ 2.0101 to 2.0107~~ developed according to Laws of 1981 Chapter 365, § 136. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

2.3112 Priority Uses of Motor Fuel

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR §§ 2.3120 A. to H. and 2.3121 A. to E. are intended to reduce the demand for motor fuels and

ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

B. Priority Uses. In an Energy Supply Emergency resulting from a shortage of gasoline, diesel fuel, or other petroleum product used as a motor fuel, higher priority uses are those necessary for protecting the health and safety of the citizens of the State, and minimizing the economic disruption to the State's economy. Uses within priority categories are not ranked according to preference.

1. First priority motor fuel uses are:

a. Military Uses;

b. Emergency Vehicles;

c. Energy Production;

d. Sanitation Services;

e. Telecommunications;

f. Agriculture;

g. Passenger Transportation;

h. Cargo, Freight, and Mail Hauling ~~by truck~~, including newspaper deliveries; and

i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR §§ 2.3120 A. to H., and 2.3121 A. to D., are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided ~~under Minn. Stat. § 116H.095 (1981)~~ by Laws of 1981 Chapter 356, § 136, if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures ~~under 6 MCAR §§ 2.0101 to 2.0107~~ promulgated according to Laws of 1981, Chapter

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356, § 136. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR § 2.3110.

5. When a motor fuel is also used as a home heating fuel and that specific fuel is in short supply, the fuel oil priority rankings described in 6 MCAR § 2.3111 shall apply.

2.3113 Severe Shortage. If the Director determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority consumers of motor fuel or diesel fuel, then the Director shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

2.3114 Fuel Oil Emergency Measures. Upon declaration of an Energy Supply Emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary Measures:

1. Home owners and renters shall be requested to turn their thermostats back to between 62°F and 66°F during the day and 60°F and 58°F during the night and unoccupied hours, and shall be requested to set back water heater thermostats to

between 105°F and 115°F (or the lowest setting). Residences occupied by persons for whom such a measure endangers health shall be warned not to comply with this measure. Such persons include the elderly and sick and children under the age of one.

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

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

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

   a. ~~The Fuel Allocation Rules of Procedure (6 MCAR §§ 2.0101--2.0107)~~The procedures for state set-aside allocation (promulgated according to Laws of 1981, Chapter 365, § 136) will be used to allocate voluntarily released inventory.

   b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR § 2.3111 B.

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

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

B. Mandatory Measures:

1. Commercial buildings shall be ordered to comply with the standards that were set in the Emergency Building Temperature

Restrictions (EBTR), 10 Code of Federal Regulations Part 490 (1979). Buildings which were exempted under EBTR are exempted from this rule.

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Pool when power from non-petroleum-fired generating facilities is available from the Pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

5. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency. Each firm or institution required to convert to residual oil shall be notified at least 10 days prior to the effective date of the measure of the State's intent to implement this measure.

no indication of where this amendment came from or why.

C. When the Agency (Department) determines that actions listed in 6 MCAR § 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

"eliminate" seems inappropriate - "adjust to" would be better. If usage is curtailed, any shortage continues to exist. These rules will enable orderly adjustment to limited supply rather than providing unlimited supply.

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62°F during the day where such action does not violate Minnesota Rule MOSHC 41(f), and 50°F at night or during unoccupied periods.

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

3. Delivery of fuel oil supplies to specific ~~industries~~ industrial sectors, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing signed by the Division Director, and shall be delivered by registered mail to firms in the ~~industry~~ industrial sectors and area suppliers at least 10 days prior to the effective date of the measure.

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

   b. First priority uses under 6 MCAR § 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

   c. A firm within an industrial sector may be exempted from curtailment of fuel oil deliveries if it can demonstrate ~~it~~

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~~has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove~~ that its energy-labor ratio is significantly below the industry average of the industrial sector because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR § 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for ~~industry~~ industrial sector groupings and associated S.I.C. codes will be compiled by the Department and published biennally in the State Register during the month of October.

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

5. Actions available for implementation under 6 MCAR § 2.3114 A. and B. will remain available under 6 MCAR § 2.3114 C.

2.3120 Motor Fuel Emergency Measures

Upon declaration of an Energy Supply Emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. Public Information Measure.

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

2. Measure requirements.

a. The Emergency Operating Center shall prepare and issue news releases to news media throughout the state containing at least the following:

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Agency estimates of the shortfall of supplies expected for Minnesota;

(3) Agency estimates of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

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

c. The Emergency Operating Center shall make available to large worksites, schools and local energy coordinators, literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

3. The Emergency Operating Center shall provide public service announcements to the media which emphasize the importance of

individual and corporate efforts in conserving motor fuel and provide specific conservation tips.

B. Employer-based Motor Fuel Conservation Measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an Energy Supply Emergency.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level with a total combined student-facility commuting population of 200 or more persons, including colleges, universities, and vocational schools.

(3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees than what? at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which reduces employee commuting and business-related motor fuel consumption.

c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the Department (Agency) upon request.

3. Employer plans may be submitted to the Agency for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under 6 MCAR § 2.3120 B. 7.

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

5. Employer Emergency Motor Fuel Conservation Plan

a. Employers may submit an emergency motor fuel conservation plan that demonstrates how employee commuting and business travel motor fuel consumption would be reduced during an Energy Supply Emergency. The employer may choose conservation strategies which achieve the required reduction.

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

c. Employers submitting self-styled emergency motor fuel conservation plans shall include:

(1) a calculation of their baseline consumption as defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to ~~each~~ the selected strategies, and

(3) the plan elements described in 6 MCAR § 2.3120 B. 7.

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

employers may submit a plan before the declaration of an emergency - how long prior to that submission will an employer be credited?

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

6. Employer Motor Fuel Reduction Strategies

a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.

b. Category I Strategies:

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

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

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) vehicle(s) with a minimum carrying capacity of 20 passengers,

(b) a participation rate ~~equal to~~ of 50 percent of employees who live within a three mile radius of the worksite, or an equivalent number, and

(c) at least one commuter check point at least five miles from the worksite.

Employer-sponsored rideshare programs which fulfill the requirements of ~~6 MCAR § 2.3120~~ B.6.b. will be certified by the ~~Agency~~ Department. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in ~~6 MCAR § 2.3120~~ F. and will be exempt from the odd-even purchase restriction described in ~~6 MCAR § 2.3120~~ D.

d. Category II Strategies:

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

(2) Prohibit the use of company-owned vehicles for single-occupancy commuting and adopt a policy of using

company vehicles for employee carpools.

(3) Purchase an electric or electric-hybrid vehicle.

(4) Promote transit use by employees through direct sale of transit passes at the worksite, fare subsidies, or display of direct and connecting routes serving the worksite.

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

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

(7) Institute flexible or staggered work hours.

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

7. An employer submitting an emergency motor fuel conservation plan according to ~~6 MCAR § 2.3120~~ B. 5. or 6. shall identify in its plan the following:

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

b. Title of the person or persons responsible for supervising each plan component.

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

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

~~f~~e. The schedule for implementing chosen strategies; and

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

8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders the employer-based motor fuel conservation measure.

9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an Energy Supply Emergency for motor fuel shall:

a. Submit to the ~~Agency~~ Department within ~~fifteen~~ days after declaration of an Energy Supply Emergency for motor fuel a plan to reduce baseline consumption by at least ~~fifteen~~ percent over a period of three months or longer, or

b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under 6 MCAR § 2.3120 B. 5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:

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

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

~~(c)~~(3) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of 6 MCAR § 2.3120 B. 9.:

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

(2) Agriculture;

(3) Energy Production;

(4) Telecommunications; and

(5) Sanitation Services.

10. The emergency operating center shall publicly announce the implementation the employer-based conservation measure at least 10 days prior to the effective date of the measure.

no indication of when T why this was added

C. School Conservation Measure.

1. The purpose of this measure is to conserve motor fuel by requiring schools to adopt strategies to reduce student commuting and school-sponsored activities in an Energy Supply Emergency.

2. Applicability.

a. ~~Each~~All school districts, as defined ~~in~~ by the Education Code Minn. Stat. ~~§§ 122.01 to 122.541 (1980)~~ Chs. 120 to 129, and nonpublic schools, as defined in Minn. Stat. § 123.932,

subd. 3 ~~(1980)~~, which have a combined student-staff population of 100 persons or more, is required to comply with this measure.

b. The Boards of all school districts, defined and empowered under the Education Code, Minn. Stat. Chs. 120 to 129 ~~(1980)~~, and non-public school authorities, shall be responsible for submitting plans under this rule.

3. School Boards shall submit to the Department within 18 months after the effective date of these rules, or within 45 days after declaration of an Energy Supply Emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs six or seven of this rule.

4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the Agency in one of the following forms:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.

5. School districts or nonpublic school associations shall submit either a self-styled conservation plan as provided in paragraph 6 of this rule or a plan structured from the strategies provided in paragraph 7.

6. School Emergency Conservation Plan: Option A.

a. School Districts may submit a self-styled conservation plan including any conservation strategies that taken together

would reduce baseline consumption by at least 15 percent during an Energy Supply Emergency.

b. Self-styled conservation plans shall include:

(1) a calculation of the baseline consumption, defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in 6 MCAR § 2.3120 C. 8.

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

d. The Assistant Director may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in paragraph 7 of this rule.

7. School Emergency Conservation Plan: Option B Reduction Strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School Districts shall implement Category I strategies upon the selection of this measure by the Governor in an Energy Supply Emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation, or

(d) are members of a carpool registered with the school rideshare coordinator.

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

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

c. Category II strategies. School Districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the Department.

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

(2) Adopt and enforce a parking management strategy which gives preferential parking to high occupancy vehicles in

student parking lots or requires fees for parking on school grounds.

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

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

(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I - strategy (2) has been choosen and applies when the Governor orders the School Conservation Measure.

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

8. Emergency Motor Fuel Conservation Plans submitted by school districts shall include:

a. the title of the person or position responsible for implementing the plan during an Energy Supply Emergency for motor fuel;

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

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

9. School Districts shall implement all or part of their plans as specified by the Division Director upon order of the Governor.

D. Odd-Even Purchase Requirement Measure.

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

2. Applicability.

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

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

c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following vehicles shall be exempt from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in ~~6 MCAR § 3.2120~~ B. 6. b.

c. ~~Vehicles being used for commercial purposes~~ Commercial Vehicles, as defined in 6 MCAR § 2.3104 I.

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

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

f. Motorycycles and mopeds.

g. Vehicles not licensed for highway use.

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

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

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E. Minimum Purchase Requirement Measure.

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

2. Measure requirements.

Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five gallon minimum.

c. In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into a container, other

than the fuel tank of a vehicle, to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

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

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

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

   a. Vehicles being driven for first priority uses, as defined in 6 MCAR § 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

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

   c. Out-of-state licensed vehicles.

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

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

F. Flag Requirement for Motor Fuel Retailers.

1. The purposes of this measure are to signal to motorists availability of motor fuel for purchase at stations through

the display of flags and to permit retailers to limit sales to priority users only.

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. ~~The flag should be clearly visible from at least 100 yards in each direction of the station.~~

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

b. A Yellow Flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in 6 MCAR § 2.3120 B. A station flying a yellow flag shall not show preference in the sale of motor fuel to any priority vehicle.

c. A Red Flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR § 2.3104 R.

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

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G. Motor Fuel Availability Measure.

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

2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by ~~Minn. Stat. § 116H.095 and 6 MCAR §§ 2.0101 to 2.0107~~ Laws of 1981, Chapter 356, § 136.

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

H. Strict Enforcement of Posted Highway Speed Limits.

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

2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR § 2.3110.

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

2.3121 Severe Motor Fuel Emergency Measures. When the Agency determines that the measures listed in 6 MCAR § 2.3120 A. to H., have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle Permit-Sticker Measure

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

2. Applicability.

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

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

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

3. Exemptions.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112;

b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;

c. Motorcycles and mopeds;

d. Short-term rental vehicles; and

e. Such other vehicles as the Governor may determine.

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

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

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

~~B. Recreational Vehicle Ban Measure - Type I.~~

~~1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands for limited periods during an Energy Supply Emergency.~~

~~2. Measure requirements for a Type I recreational vehicle ban.~~

~~a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the DDVS, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RB vehicles, shall be prohibited for a period not to~~

~~exceed 15 days during any 30 day declared energy emergency. A Type I ban may, however, be renewed for the maximum 15 day period for each 30-day period the energy supply emergency remains in effect~~

~~b. The Division Director shall issue a statement to news media at least seven days prior to the effective date of the ban, explaining the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The Division Director's statement is to receive widest possible distribution to inform the public of the ban.~~

~~c. Exceptions. Parties may apply to the Local Energy Conservation Board for an exception to this measure. Upon a determination by the Board that the applicant should be granted an exception to the ban, the Board shall recommend to the Division Director that an exempt sticker be issued to the applicant. The Division Director, or designate, shall deliver to the applicant within three days after receipt of the Local Conservation Board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The Division Director, or designate, shall not deliver an exempt sticker to the applicant, if the Director serves notice of his/her intent to reverse the recommendation of the Local Energy Conservation Board as provided in 6 MCAR § 2.109 E. 3.~~

~~G. Recreational Vehicle Ban Measure - Type II.~~

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1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters subject to the State's proprietary interest, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum 15 day period for each 30-day period an energy supply emergency remains in effect.

2. The Division Director shall issue a statement to news media at least seven days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The Division Director's statement is to receive widest possible distribution to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the Local Energy Conservation Board. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3109. Upon a determination by the Board that an applicant should be granted an exception to the ban, the Board shall recommend to the Division Director that an exempt sticker be issued to the applicant. The Division Director, or designate, shall deliver

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~~to the applicant within three days after receipt of the Local Conservation Board's favorable recommendation, and exempt sticker which must be displayed for the duration of the ban. The Division Director, or designate, shall not deliver an exempt sticker to the applicant, if the Director serves notice of his/her intent to reverse the recommendation of the Local Energy Conservation Board as provided in 6 MCAR § 2.3109 E. 3.~~

~~B~~B. Speed Limit Reduction Measure.

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

2. The Governor upon the advice of the Department shall order the Commissioner of Transportation to set a lower speed limit on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an Energy Supply Emergency pursuant to Minn. Stat. § 169.141 (1980).

3. Violation of the maximum limit during an Energy Supply Emergency for motor fuel shall carry the additional penalities as provided in 6 MCAR § 2.3110.

4. The Governor may request State, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through personnel assignments and increased road surveillance efforts.

~~E~~C. Driving Ban Measure.

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

2. Upon the Department's determination that a 24 hr. driving ban is necessary to reduce the demand for motor fuel, the Governor

may order an emergency driving ban. Upon the Governor's order, the Division Director shall issue the order and a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall state the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five days prior to the imposition of the driving ban.

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

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

   a. Emergency vehicles;

   b. Sanitation services vehicles;

   c. Aviation ground support vehicles;

   d. Vehicles identified as required in 6 MCAR § 2.3120 B.7.g. and used by employees in commuting for the purposes of plant protection.

   e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;

   f. Individuals who require daily medical treatment; and

   g. Out-of-state licensed vehicles.

5. Any vehicle registered and licensed by the State of Minnesota and operated during a driving ban shall prominently display a

sticker or card which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, for example, police, fire, ambulance, or aviation ground support vehicles.

6. The Agency (Department) will issue guidelines for identification of exempt vehicles prior to a driving ban.

and one of the section signs, and insert "6 MCAR S" before "2.3121"

Page 30, line 4, strike "Minnesota" and after "(f)" insert " of the Department of Labor and Industry"

Page 31, line 16, strike "grouping," delete "s" and insert underscored text after it and strike "S.I.C." and insert " standard industrial classification"

Page 31, lines 24 and 25, strike "6 MCAR S 2.3114"

Page 34, lines 6 and 25, strike "6 MCAR S 2.3120"

Page 34, line 22, strike "D." and insert "C."

Page 36, line 6, strike "vehicle(s)" and insert "vehicles"

Page 38, line 18, strike "fifteen" and insert "15"

Page 38, line 20, strike "fifteen" and insert "15"

Page 38, line 24, strike "6 MCAR S 2.3120"

Page 39, lines 7 and 8, strike "6 MCAR S 2.3120"

Page 39, line 27, delete "to" and insert "-"

Page 40, line 12, strike "six" and insert "6." before "or" and strike "seven of this rule" and insert "7" before the period

Page 40, line 24, after "6" insert "."

Page 41, line 5, strike "D." and insert "C."

Page 41, line 8, strike "6 MCAR S 2.3120"

Page 41, line 16, strike "paragraph" and "of this rule"

Page 44, line 27, strike "I." and insert "H."

Page 47, lines 17 and 18, strike "6 MCAR S 2.3120"

Page 47, line 25, delete "; and " and insert ". They"

Page 49, line 2, strike "A. to H."

Page 53, line 15, strike "(1980)"

Attachment

References to Laws of 1981, Chapter 365, S 136 have been changed to the appropriate coded section of Minnesota Statutes - Minn. Stat. S 116H.095

References to the Minnesota Energy Agency, agency, and director have been changed to the Department of Energy, Planning and Development, department and commissioner where appropriate

Page 1, line 11, strike "Sections" and before "8512" insert "Section"

Page 4, line 14, delete "6 MCAR S 2.3104 I" and insert "H."

Page 6, line 28, delete "any" and insert "a"

End of Page 6, beginning of line 7, place underscored text after stricken text

Page 8, line 13, delete underscored text and insert "United States Code, section 101 (1980)"

Page 8, line 24, strike "to" and insert "-"

Page 9, line 16, strike "to" and insert "-"

Page 15, lines 9 and 10 strike "A. to C.," "A. to H.," "A. to D.," and delete "E."

Page 16, line 7, strike "A. to H." and "A. to E."

Page 16, line 9, underscore "to"

Page 17, line 29, delete everything before the period and insert "Summit National Banking Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415"

Page 18, line 16, strike the comma

Page 19, line 27, strike "6 MCAR S 2.3109"

Page 20, line 20, strike "6 MCAR S 2.3109"

Page 23, line 8, strike "to .052" delete "15" and before the period insert "-15.052"

Page 23, line 28, after "MCAR" insert "S" and strike "A. to C."

Page 24, lines 27 and 28, delete "A. to H." and "A. to E."

Page 25, lines 27 and 28, strike "A. to H.," "A. to E.," and one of the section signs, and insert "6 MCAR S" before " 2.3121"

Page 26, lines 20 and 21, strike "A. to H.," "A. to D.,"

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

4/30/82

__X__ The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

SEE ATTACHMENT

Steven C. Cross
Revisor of Statutes

Name: Paul M. Marinac
Paul M. Marinac
Title: Assistant Revisor
Phone: 296-0948

_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

_____
Agency's Representative

_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

_____
Assistant Attorney General

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Emergency Conservation and Allocation Plan During A Petroleum Shortage, 6 MCAR §§ 2.3101-2.3121.

Docket No. EA-81-005-PR

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on the 29th day of September 1981 at 1:00 p.m. at the Itasca Community College, Grand Rapids, Minnesota, after proper notice required by Minn. Stat. § 15.0912 was served upon all persons, associations, and other interested groups registered with the Minnesota Energy Agency for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, reviewing all of the testimony, considering all of the evidences addressed, and upon the records, files and proceedings herein and applicable statutory standards or criteria, and confiming the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules of the Minnesota Energy Agency Governing Procedures and Measures to be Used to Reduce Demand and Increase Supply of Petroleum Products During an Energy Supply Emergency, 6 MCAR §§ 2.3101-2.3121, are adopted this 21st day of January 1982, pursuant to authority vested in me by Minnesota Statutues sections 116H.08(a) and 116H.09, subdivision 1.

MINNESOTA ENERGY AGENCY

MICHAEL J. MURPHY
Acting Director

6 MCAR § 2.2409 **Evaluation.** The agency shall conduct a final evaluation of grant work performance within 60 days of the submission by the grantee to the agency of a final community energy plan or all the required reports and financial documents. The evaluation shall assess:

A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;

B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;

C. Whether the agreed-upon work program was completed;

D. Whether the governing body has formally reviewed the energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a hearing before the agency.

Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Governing The Minnesota Emergency Motor Fuel Conservation Plan

Notice is hereby given that the Minnesota Energy Agency is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the State Emergency Motor Fuel Plan and those measures therein which describe the actions to be taken by the state prior to, and in response to, an energy supply emergency for motor fuel. The promulgation of these rules is authorized by Minn. Stat. § 116H.09, subds. 2, 3 and 4 (1980), which requires the agency to promulgate rules for revisions to the Energy Supply Emergency Conservation and Allocation Plan.

The agency requests information and comments generally concerning the subject matter of the rules, and specifically on a set of draft rules which appears below. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements and requests for the draft rules should be addressed to David Miller, Emergency Rules Analyst, Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

Statements of information and comment shall be accepted until April 24, 1981. Any written material received by the agency shall become part of the record when the rules are promulgated.

Emergency Motor Fuel Conservation Rules governing the procedures and measures to be used to reduce demand and increase supply of motor fuel during an Energy Supply Emergency.

6 MCAR § 2.3120 **Authority.** These rules are authorized by Minn. Stat. § 116H.09 (1980). These rules will also meet, in part, the federal requirements set forth in the Emergency Energy Conservation Act of 1979, Pub. L. 96-102, 42 U.S.C. 8511-8541 (1979).

6 MCAR § 2.3121 **Purpose.** The main purpose of these rules is to identify those measures and actions to be employed in the event of a motor fuel supply emergency. The further purposes of these rules are: To facilitate the distribution of supplies to first priority users so that they have sufficient motor fuel to conduct necessary transportation; to facilitate the distribution of supplies to the public in a fair and equitable manner; to identify and authorize the actions to be undertaken by government agencies in a declared energy supply emergency; to describe and delineate the activities and responsibilities of major employers and school district authorities in motor fuel emergency planning and implementation; to establish an appeals system and procedures whereby exemptions may be determined and exceptions to imposed measures granted to persons during an energy supply emergency; and to create the authority for the State Executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR § 2.3122 **Applicability of rules.** These rules shall apply:

A. generally, during a declared Energy Supply Emergency for motor fuel (see 6 MCAR § 2.3125);

B. generally, during a declared Energy Supply Alert for motor fuel (see 6 MCAR § 2.3124);

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MEA Exh 22

C. to the Minnesota Energy Agency when the agency is preparing to recommend that an Energy Supply Alert for motor fuel or an Energy Supply Emergency for motor fuel be declared.

6 MCAR § 2.3123 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency.

B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included:

a. All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section;

b. All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and

c. All the following other industry code numbers:

1474 Potash, Soda and Borate Mineral (Potash mining only);

1475 Phosphate Rock;

2141 Tobacco Stemming and Redrying;

2411 Logging Camps and Logging Contractors;

2421 Sawmills and Planing Mills;

2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);

2873 Nitrogenous Fertilizers;

2874 Phosphatic Fertilizers;

2875 Fertilizers, Mixing Only;

2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;

4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);

4971 Irrigation Systems (for farm use); and

5462 Retail Bakeries, Baking and Selling.

2. Activities excluded: All the following industry code numbers otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

0742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

0782 Lawn and Garden Services; and

0849 Gathering of Forest Products, Not Elsewhere Classified;

C. "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal or standard level of operation. The preceding year's consumption or the most recent 3-year average will be a representative period for purposes of these rules.

D. "Cargo, freight and mail hauling by truck, including newspaper deliveries means all of the following:

1. Motor carriers for hire operating under the authority of Minn. Stat. §§ 221.011 to 221.791 and subject to the rules or orders of the Commissioner of Transporation or the Public Utilities Commission of Minnesota,

2. Mail hauling by any motor vehicle owned and operated by the U.S. Postal Service, and

3. Newspaper delivery by motor vehicle identified as a newspaper carrier;

E. "Carpool" means a continuing travel arrangement by which two or more persons travel together in a vehicle owned or rented by one or more of such persons.

F. "Carpool program" means a program undertaken by an employer either alone or in cooperation with a group of employers which matches commuting employees so that they may commute together.

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

H. "Consumer" means any person that consumes motor fuel whether diesel, gasoline, propane or alcohol.

I. "County and/or municipal fuel coordinator" means any person who has been appointed by the county board or city council to act as local fuel allocation resource person.

J. "Demand" means that quantity of products or services for which there are willing and able purchasers.

K. "Division" means the Division of Emergency Services of the Department of Public Safety.

L. "Electric utility" means any entity engaged in the generation, transmission, or distribution of electric energy for sale.

M. "Emergency services vehicle" means any of the following vehicles when equipped and identified according to law:

1. a vehicle of a fire department;

2. a publicly-owned police vehicle or a privately-owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which he is responsible;

3. a vehicle of a licensed emergency ambulance service, whether publicly or privately owned;

4. an emergency vehicle of a municipality, department or a public service corporation, approved by the Commissioner of Public Safety or the chief of police of a municipality; and

5. a utility's or contractor's vehicles performing emergency repairs for electric, telecommunications, water, or waste treatment utilities; and

6. a vehicle designated as an authorized emergecy vehicle upon a finding by the division director that a designation of that vehicle is necessary for the execution of emergency governmental functions.

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

O. "Employment site" means each building, facility, complex or site at which employees work or study, or any combination of such buildings or sites which are geographically closely related.

P. "Energy production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy.

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

R. "Flexible work hours" or "flextime" means a work system in which some or all of the employees at a given employment site have some discretion in their choice of working hours.

S. "Forecast" means a projection of future demand or supply for a specified time period.

T. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped.

U. "Highways" means all Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 (1980), and the Federal Aid Highways Act of 1956;

V. "Moped" means a pedal bicycle or similar two-wheel vehicle that is propelled by a motor.

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

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X. "Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° F to 390° F and whose source is distillation of petroleum by cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those which have superior fuel properties.

Y. "Motor vehicle owner" means any person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period of greater than seven (7) days.

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

AA. "Passenger transportation services" means all of the following transportation modes:

1. conventional public transit service which operates on a fixed route and is available to the public for a fare;
2. paratransit services such as vanpools and subscription buses,
3. air travel available to the public on a regular basis for a fare,
4. tour and charter bus services,
5. bus transportation of pupils to and from school, and
6. taxicabs licensed to conduct business in a municipality.

BB. "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety which designates the weekday on which a vehicle issued that sticker is prohibited from being operated.

CC. "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.

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

EE. "Preferential parking for carpools and vanpools" means allocation of desirable parking spaces in an employer-owned or leased lot to employees who are regular participating members in carpools or vanpools, formed through a company-sponsored or independent ride sharing program, on a priority basis over other employees who do not participate in such arrangements.

FF. "Prepaid transit" means a system through which transit use is paid for in a lump sum in advance of individual rides, usually on a weekly or monthly basis, by means of tickets, tokens, punches, passes, or other mechanisms, valid for either a fixed time period, and accepted in lieu of cash on boarding a transit vehicle or entering a transit station.

GG. "Prohibited day" means the day for which a vehicle owner has been issued a permit-sticker designating a "no-driving" day for that vehicle.

HH. "Sanitation services" means the collection and disposal for the public of solid wastes and hazardous wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated.

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

JJ. "Shuttle bus" means a transportation service that utilizes vehicles with a capacity of six passengers or more, operated on a fixed route and on a regular schedule, or on a shuttle basis, between a public transit station or stop and the employer's employment site.

KK. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs.

LL. "Supplier" means any firm or any part of a subsidiary of any firm (other than the Department of Defense) which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers.

MM. "Staggered work hours" means employee starting and quitting times that are stipulated by the employer at step intervals so that work arrival and departure times of all or some employees on a single shift are spread over a period of at least two hour(s).

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

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

PP. "Vanpool" means eight or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers.

QQ. "Vanpool program" means a program, administered by a company or government agency, which makes vehicles and services available to employers or employees for vanpooling purposes.

RR. "Vehicle lessee" means any person, firm or corporation in possession of a motor vehicle by lease.

SS. "Vehicle lessor" means any person, firm, or corporation leasing more than 25 motor vehicles a year for profit.

6 MCAR § 2.3124 Energy Supply Alert. An Energy Supply Alert shall be declared to inform the citizens of a potential motor fuel shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. An Energy Supply Alert may be declared when the agency forecast indicates a reasonable likelihood that a motor fuel supply shortage will occur within 6 months from the date of declaration.

B. The director shall have sole responsibility for declaring an Energy Supply Alert.

6 MCAR § 2.3125 Energy Supply Emergency. An Energy Supply Emergency is a state of declared emergency resulting from a shortage of motor fuel or petroleum.

A. Minnesota Energy Agency. When the agency forecast of short-term demand for motor fuel and/or other petroleum products exceeds the forecast of short-term supply of such fuels and that such a supply shortage will occur within three months, the director may recommend that an Energy Supply Emergency be declared.

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature, has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature.

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

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the division, the agency and the Secretary of State.

6 MCAR § 2.3126 Operating organization during an emergency.

A. Energy Emergency Operating Center. During a declared energy supply emergency, the division will set up an Energy Operating Center.

1. The director of the Emergency Operating Center will be the director of the Division of Emergency Services. The director shall oversee the implementation of the emergency plan.

2. The Emergency Operating Center shall be located at a site designated by the division director and staffed by personnel from the division, the Energy Agency and other state agencies as deemed necessary by the division director. While on detail at the center, these personnel shall be responsible to the director of the center.

B. Energy Agency.

1. The agency shall assist the division by analyzing the gasoline and motor fuel situation, evaluating alternative courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

2. The agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR §§ 2.3131 A.-H. and 2.3132 A.-D. capable of eliminating a motor fuel supply shortage.

3. The agency shall review and certify qualifying or employer and school district conservation plans which meet the requirements set out in 6 MCAR § 2.3131 B.-C.

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4. The director of the agency shall make a final decision on appeals heard and decided by the Local Energy Conservation Board during a declared energy supply emergency as specified in 6 MCAR § 2.3128.

C. Emergency Services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

2. The division shall use a network of regional and local coordinators who are responsible for coordinating the emergency operations in the different geographic areas of the State.

3. By January 1, 1983, the division shall develop procedures to monitor compliance with measures contained in these rules.

D. Other organizations with important responsibilities. The division shall have the authority to call on any state agency or cooperating organization, if its services are deemed to be necessary.

6 MCAR § 2.3127 Local Energy Conservation Board.

A. A Local Energy Conservation Board will be created in each county and in each city of the first class to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3131 A.-H. and 2.3132 A.-D., except 2.3131 B. and C.

1. The Governor may order that additional Local Energy Conservation Boards be established to hear appeals taken from measures imposed during an energy emergency.

2. The appointment of additional Local Energy Conservation Boards and their conduct shall be governed by the rules and procedures set forth in 6 MCAR § 2.3127 and 6 MCAR § 2.3129.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county Local Energy Conservation Board which includes, if available, an elected county official, the county fuel coordinator, a health professional, the county director of emergency services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of emergency services are the same person, the fifth member shall be selected from the public. The county attorney shall act as an advisor to the Local Energy Conservation Board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal Local Energy Conservation Board which includes, if available, an elected city official, the city fuel coordinator, a health professional, the city director of emergency services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of emergency services are the same person, the fifth member shall be selected from the public. The city attorney shall act as an advisor to the Local Energy Conservation Board.

C. The appointed members shall not be named until after declaration of an energy supply alert or energy supply emergency. The chair of the county board of commissioners and the chair of the city council shall make every reasonable effort to avoid any conflict of interests in the appointment of the members to the Local Conservation Boards.

D. Three members shall constitute a quorum.

6 MCAR § 2.3128 Appeals.

A. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6 MCAR § 2.3132 A.-H. and 2.3132 A.-D., except 2.3131 B. and C., shall be heard by the Local Energy Conservation Board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate. Persons residing in a municipality where a Local Conservation Board has been established shall direct appeals to the municipal Local Energy Conservation Board.

2. Appeals from a director's decision denying all or any part of an employer or school district conservation plan, or an appeal from a division director's order to implement an employer or school plan shall be heard and decided by a hearing examiner appointed by the Chief Hearing Examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

B. Content of appeals.

1. Each appeal from an action taken pursuant to a declared energy supply emergency or other actions taken pursuant to the authority contained in these rules, shall be in writing and signed by the appellant. Each appeal shall state:

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

b. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;

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

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

2. Each appeal of the director's decision to deny all or part of an employer or school district conservation plan or an appeal of the division director's order to implement all or any part of an approved conservation plan shall also include:

a. documentation of the methodology on which the appellant bases his/her claim of motor fuel savings or program performance,

b. a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three (3) calendar days after receipt of an appeal, the Local Conservation Board or Hearing Examiner, whichever is appropriate, shall set a hearing date. The date of the hearing shall not be more than five (5) calendar days after receipt of an appeal unless the appellant requests a later hearing date. The Chair of the Local Conservation Board or designate, or the Hearing Examiner, shall notify all affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than (2) calendar days before the hearing. An appeal shall be considered received when it has arrived at the location(s) designated in 6 MCAR § 2.3128 A. Local Conservation Boards may convene at any location within their jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. Appeals from the director's decision to deny all or any part of an employer or school district conservation plan not made during a declared energy supply emergency shall be directed to the Office of Administrative Hearings. The "Rules for Procedure for Contested Cases" found at 9 MCAR §§ 2.201-2.222 shall govern the conduct of the appeals.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a director's decision denying all or any part is of an employer or school district conservation plan shall name the director as a party to the appeal.

4. Any party may be represented by counsel, but need not be.

5. The appellant, if subject to provisions of these rules, must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision of an appeal shall be made in accordance with 6 MCAR § 2.3129 E.

6. Informal disposition of an appeal may be made at any point in the proceeding in regard to any issue therein by stipulation, agreed settlement, or consent order between the appellant and the Emergency Operating Center. In the case of employer and school district conservation plans, the director shall have the power to informally dispose of an appeal by agreement or consent order.

7. An appellant failing to appear after receiving timely notice, may have his/her claim disposed of adversely by the Local Conservation Board or the hearing examiner.

8. The failure of the Emergency Operating Center (EOC) to appear before a hearing of a Local Conservation Board on a matter pertaining to these rules shall not constitute a default, or act to prejudice or bar the director from contesting the board's decision so long as the director complies with the timing provisions contained in 6 MCAR § 2.3128 E.5.

9. The hearing examiner or Local Energy Conservation Board may order a prehearing conference to be held at any time prior to a hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

10. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of the energy supply emergency.

D. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the Local Energy Conservation Board, or the Hearing Examiner whichever is appropriate according to 6 MCAR § 2.3128 A., at which hearing the parties may present and

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cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal. Evidence must be offered to be considered.

2. The Local Energy Conservation Board or the hearing examiner shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The Chair of the Local Energy Conservation Board and the Hearing Examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The Hearing Examiner or Local Conservation Board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal.

2. Within two (2) calendar days after the hearing is closed, the Local Conservation Board or the hearing examiner shall issue a decision in writing, including the findings and conclusions on which the decision is based, and a copy of the decision shall be given to all parties to the appeal.

3. The hearing examiner shall issue a final decision.

4. The Local Conservation Board shall issue a recommended decision on each appeal heard. The recommendation shall be referred to the director for final decision.

5. The director may accept or reverse the board's decision or may remand the appeal for further hearing on specified parts. The director must notify the appellant and the Local Board of his/her decision within two (2) calendar days after receipt of the Board's recommendation. If the director's decision is to reverse or remand a decision of a Local Energy Conservation Board, the director shall issue a written statement containing the findings and grounds for overturning or remanding for further hearing the Local Board's decision. A copy of the director's statement shall be sent to the appellant and the Local Energy Conservation Board within five (5) working days of the notice of the decision. Failure of the director to make timely notice of his/her intent to reverse or remand the Local Board's decision will act to automatically validate and make effective the Local Board's recommended decision.

6. The appellant may seek judicial review of a final decision of the director, the hearing examiner, or the Local Conservation Board, in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-052 (1980).

6 MCAR § 2.3129 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1980).

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

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

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

6 MCAR § 2.3130 Priority users.

A. The following is the list of first priority motor fuel consumers:

1. Department of Defense,
2. Agricultural production,
3. Emergency services,
4. Energy production,
5. Sanitation services,
6. Telecommunication services,
7. Passenger transportation services,
8. Cargo, freight, and mail hauling by truck, including newspaper deliveries, and
9. Aviation ground support services.

B. Exemptions granted in 6 MCAR § 2.3131 A.-H., and 6 MCAR § 2.3132 A.-D., are based on the above list of first priority users.

C. State set-aside motor fuel supplies shall be allocated to meet the fuel requirements of first priority users to the extent that state set-aside supplies are available. State set-aside shall be allocated according to

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

6 MCAR § 2.3131 Measures.

Upon declaration of an Energy Supply Emergency, the Governor shall select from the following measures to reduce a motor fuel supply shortage.

A. Public information measure.

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

2. Measure requirements.

a. The Emergency Operating Center shall prepare and issue news releases to the local news media throughout the state containing at least the following:

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Agency estimates of the shortfall of supplies expected for Minnesota;

(3) Agency estimates of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

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

c. The Emergency Operating Center shall make available to large worksites, schools and local energy coordinators literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

3. The Emergency Operating Center shall provide public service announcements to local media which emphasize the importance of individual and corporate efforts in conserving motor fuel as well as providing specific conservation tips.

B. Employer-based commuter and travel measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to take steps to reduce the motor fuel consumption of employees in commuting to and from the work site and in business-related travel.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level, including but not limited to colleges, universities, and vocational schools, with a total combined student-faculty-staff commuting population of 200 or more persons.

(3) State, county, and municipal governments at each employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any conservation activity which reduces employee motor fuel use in commuter travel.

c. Technical assistance in the preparation of emergency contingency plans will be provided by the agency to employers upon request.

3. Employers required to comply with this measure shall submit to the director, within one year of the effective date of these rules, or within 45 days after declaration of an energy supply emergency, whichever comes first, a plan designed to reduce motor fuel consumption of employees in commuting to and from the work site and in business-related travel. Employers shall either submit a self-styled reduction plan as provided in paragraph 4, or select from the strategies provided in paragraph 5.

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4. Employer emergency conservation plan.

a. Employers may submit an emergency motor fuel conservation plan which demonstrates how commuting and business travel motor fuel consumption would be reduced during an energy supply emergency. The plan shall contain whatever conservation strategies the employer chooses to achieve the required reduction.

b. Employer plans submitted under this paragraph must contain conservation strategies which taken together would reduce employee motor fuel consumption in commuting and in business travel by 15 percent from the baseline consumption as defined in 6 MCAR § 2.3123 C.

c. A conservation credit of up to 5 percent will be allowed for employers who can demonstrate that ongoing conservation programs have reduced:

(1) the commuting miles of employees, and/or

(2) business-related motor fuel consumption.

d. The director may disapprove any employer plan submitted under this paragraph which fails to empirically support the levels of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in paragraph 5.

5. Employer emergency plan reduction strategies.

a. An employer plan, otherwise, shall be structured as follows. Employers shall select at least four strategies from the following categories, and in no case shall select less than one strategy from Category I.

b. Category I strategies:

(1) Initiate a carpool program for employees, either in-house or through participation in a state or regional car pool program.

(2) Provide a minimum 50 percent discount for transit fares, through direct sale of transit passes at the job site. In conjunction with this strategy employers shall adopt flexible work hours.

(3) Sponsor an employee vanpool program involving at least one operating van (purchased, leased) per 50 employees, or demonstrate an equivalent level of employee participation in an independent vanpool program or employee-owned or operated vans.

(4 Reduce by one the number of weekdays during which business is conducted. Employers selecting this strategy shall not perform, or have employees perform, any activity related to their business except where:

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

(b) Manufacturing activities required in certain industrial processes, such as coke ovens or chemical manufacture, must operate continuously and where disruption would be extremely costly; and

(c) Plant and equipment protection requires a minimum level of attention or surveillance.

c. Category II strategies: Employers shall select from the following measures so that the number of strategies adopted in their plan totals at least four.

(1) Adopt and enforce one parking management strategy from the following choices:

(a) Provide preferential parking for high occupancy vehicles in employer parking lots (at least one-third of available spaces).

(b) Subsidize at least 20 percent of the cost of contract parking in independently operated parking facilities for employee carpools of three or more people.

(2) Prohibit the use of company-owned vehicles for single-occupant commuting and adopt a policy of utilizing company vehicles for employee carpools where the employer owns or leases more than 20 automobiles.

(3) Provide one company-sponsored auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide such a service.

(4) Purchase an electric vehicle for urban travel of at least 4000 miles a year to be dispatched as fleet vehicle in substitution of a conventional vehicle.

(5) Subsidize at least 25 percent of transit pass expense for employees at the work site. This may be done in conjunction with existing discount plans offered by transit corporations to employers and employees. Flexible work hours must be instituted in conjunction with this strategy.

(6) Provide facilities which promote employee commuting by bicycle or moped such as:

(a) indoor or sheltered bicycle parking areas,

(b) high security bicycle parking, and

(c) showers and dressing areas.

(7) Participate on a regular basis with a rideshare coordinating agency to provide jitney service to persons requesting travel to a destination at or near the route taken for the business trip. The vehicle provided for this purpose may be an employer-owned vehicle or an employee-owned vehicle used extensively for business purposes.

6. Employers will be credited for travel reduction actions taken prior to enactment of these rules when those actions are shown to produce ongoing fuel savings.

7. The employer plan shall identify:

a. Sources of needed capital improvement;

b. The specific carpool program and transit services to be used;

c. Title of person responsible for supervising each plan increment;

d. Type of internal communication media to be used to keep employees informed of the employer's program;

e. The administrative assistance that will be provided in the organization of carpools, vanpools, and other joint transportation modes; and

f. The personnel or positions that will perform essential minimum operations for the firm during a driving ban.

8. Employers shall implement conservation strategies that require significant lead time and organization prior to a declared energy supply emergency, (preferably at or before submittal of their emergency energy conservation plans), if the employer intends to rely on those strategies to complete the minimum number of strategies required for their plan. During an energy emergency, the division director may direct an employer to intensify efforts in existing programs or strategies where there exists a potential for further motor fuel conservation (i.e., ridesharing).

9. Employers shall institute any or all strategies contained in an approved employer conservation plan upon the Governor's selection of the employer-based motor fuel conservation measure.

C. School conservation measure.

1. The purpose of this measure is to conserve motor fuel by involving school authorities and students in emergency contingency planning and by requiring school districts to take steps to reduce the quantity of motor fuels consumed by schools for school-sponsored activities.

2. Applicability.

a. Each school district, as defined in Minn. Stat. §§ 122.01-122.541 (1980), and all non-public schools, as defined in Minn. Stat. § 123.932, subd. 3 (1980), which have a combined student-staff population of 100 persons or more, are required to comply with the provisions of this measure.

b. The boards of all school districts, defined and empowered under the Education Code, Minn. Stat. chs. 120-129 (1980), and non-public school authorities, shall be the responsible entities for submitting plans under this rule.

3. School boards shall submit to the director within one year of the effective date of these rules, or within 45 days of a declared energy supply emergency, whichever comes first, a plan designed to reduce by at least 15 percent from baseline consumption the amount of motor fuel consumed by students and staff in commuting to and from the school site and the amount of motor fuel consumed by vehicles for school-sponsored functions. The baseline consumption is defined in 6 MCAR § 2.3123 C.

4. Non-public schools may fulfill the requirements of this rule by submitting a plan to the agency in one of the following ways:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

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c. A signed agreement with a school district which documents the non-public school's strategies and identifies the contact person(s) through whom information regarding the implementation and monitoring of strategies adopted by the private school is to be communicated to the school district.

5. School districts or non-public school associations shall have the option of submitting either a self-styled conservation plan consisting of strategies which would reduce baseline consumption by at least 15 percent, or a plan structured from the strategies provided in clause 7.

6. School emergency conservation plan: Option A.

a. School districts submitting self-styled emergency motor fuel conservation plans shall include calculations of the reductions of student and staff commuting and fuel use for school-sponsored activities, including bus transportation, resulting from each selected strategy.

b. A maximum conservation credit of five (5) percent will be allowed to school districts which can demonstrate that ongoing conservation programs or actions have reduced the student/staff commuting and/or school transportation motor fuel consumption.

c. The director may disapprove of any school district or association plan submitted under this rule which fails to empirically support the level of savings attributable to each of the proposed actions. Self-styled school plans may contain any of the strategies provided in paragraph 7 of this rule.

7. School emergency conservation plan: Option B Reduction Strategies.

a. School districts shall select at least four strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies:

(1) Ban student driving except for students exempted on the basis of special need. Exemptions may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school: or

(c) have job requirements that demand access to automobile transportation.

(2) Reschedule or cancel extracurricular activities including athletic events until termination of the energy supply emergency.

c. Category II strategies:

(1) Initiate a student carpool program.

(2) Adopt and enforce one parking management strategy from the following choices:

(a) give preferential parking to high occupancy vehicles in student parking lots:

(b) provide indoor or sheltered bicycle and moped parking with a capacity for at least five percent of the student body; and

(c) institute a system of fees for parking on and around school grounds.

(3) Eliminate the on-the-road portion of driver education for the period of the emergency.

(4) Cancel or reschedule all non-athletic extra-curricular activities.

(5) Participate in an independently-sponsored school bus fuel economy program.

8. Plans submitted by school districts shall include:

a. The person or position responsible for implementing the plan during a motor fuel shortage.

b. The means of communications through which student and faculty will be notified of the measures taken during an energy shortage.

c. Procedures necessary to implement the plan, such as the method by which carpools will be formed or the fees that will be charged for parking.

9. School districts shall implement conservation strategies that require significant lead time and organization prior to a declared energy emergency (preferably at or before submittal of their energy conservation plans), if the school district intends to rely on those strategies to complete the minimum number of strategies required for their plan. During an energy supply

emergency, the division director may direct a school district to intensify efforts in existing programs or strategies where there exists a potential for further motor fuel consumption (i.e., student ridesharing).

10. School districts shall implement all or any part of these plans as specified by the division director upon selection of this measure by the Governor.

D. Odd-even purchase requirement measure.

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

2. Applicability.

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

b. Specialty plates and personalized plates issued by the Division of Driver and Vehicle Services to individuals or organizations which display no ending numeral are deemed to be "odd" for purposes of the purchase requirement.

c. Sales and purchases of motor fuel shall not be restricted to any vehicle on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following users shall be exempt from the odd-even purchase requirements and may purchase motor fuel on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3130. For purposes of this rule, vehicles used for agricultural production will be limited to registered and licensed farm trucks and trailers, and vehicles directly and currently engaged in agricultural uses such as tractors and trucks hauling feed, livestock, grain or farm implements.

b. For purposes of the minimum purchase requirement vanpools will be those vehicles either:

(1) displaying an identifying designation of "vanpool" issued by a vanpool leasing agency, vanpool services agency, or employer, or

(2) carrying at least eight passengers for the purpose of a work commuting trip, in the judgement of the motor fuel retailer.

c. Vehicles operated by handicapped persons and displaying a handicapped license plate or other special identification.

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

e. Motorcycles and mopeds.

f. Vehicles not licensed for highway use.

g. Vehicles being operated by individuals under emergency circumstances which in the judgement of the retailer demand an exception.

E. Minimum purchase requirement measure.

1. The purpose of this measure is to decrease vehicle lines at motor fuel retail outlets by reducing the frequency of fill ups.

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted from a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least 5 gallons for all 4 cylinder vehicles, or 7 gallons for all vehicles with more than 4 cylinders.

b. In the event that the quantity purchased is less than the five- or seven-gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction is equal to the stated pump price times either the five- or seven-gallon minimum.

c. In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into any container or

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containers other than the fuel tank of a vehicle to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

3. Any person selling motor fuel in transactions to which provisions of this section apply shall display, at the point of sale, notice of such provisions.

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

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

a. Vehicles being driven for first priority uses as defined in 6 MCAR § 2.3130. For purposes of the minimum-purchase requirement, vehicles used for agricultural production will be limited to trucks registered and licensed as farm trucks and trailers, and trucks or trailers directly engaged in agricultural uses such as hauling feed, livestock, grain, or farm implements.

b. For purposes of the minimum purchase requirement, vanpools will be those vehicles either:

(1) displaying an identifying designation of "vanpool" issued by a vanpool leasing agency or vanpool services agency, or

(2) carrying at least eight passengers for the purpose of a work commuting trip, in the judgement of the motor fuel retailer.

c. Motorcycles and mopeds and other similar three-wheeled vehicles.

d. Out-of-state licensed vehicles.

F. Flag requirement for motor fuel retailers measure.

1. The purposes of this measure are: to signal motorists of the availability of motor fuel for purchase at stations through the display of flags; to permit retailers to limit sales to priority one users only; and to ensure that preferential treatment or favoritism is not practiced by retailers.

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. The flag should be clearly visible from at least 100 yards in each direction of the station.

3. Flags should be displayed as follows:

a. Green Flag indicates that gasoline is available to the public subject to any purchase restrictions imposed pursuant to these rules. A station flying a green flag cannot show any preference in regard to the dispensing of gasoline to customers, except that emergency vehicles may be allowed to move to the front of an existing gas line and be fueled.

b. Yellow Flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3130. Automobile servicing may or may not be available to the public. A station flying a yellow flag cannot preferentially serve non-priority vehicles.

c. Red Flag indicates a station is out of gasoline and/or is closed. No gasoline may be dispensed from a station flying a red flag, except to emergency service vehicles, as defined in 6 MCAR § 2.3123 M.

G. Motor fuel availability measure.

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

2. The Emergency Operating Center shall issue state set-aside, if available, to retailers who have historically remained open 24 hours a day and provided emergency road service, so that these stations continue to provide 24-hour road service and have motor fuel supplies for sale.

3. The Emergency Operating Center shall publicize the location of those stations participating in the availability program in local newspapers in the proximate geographic area. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Department of Economic Development's Tourist Information Center, both of which provide gasoline availability information services.

H. Strict enforcement of 55 mph speed limit measure. The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit of 55 mph.

1. All motorists shall strictly obey the maximum legal speed limit of 55 mph. Violation(s) of the maximum legal speed limit on all highways during a declared energy supply emergency shall suffer the additional penalities provided in 6 MCAR § 2.3129.

2. The Emergency Operating Center shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through assignment of personnel and increased road surveillance efforts.

6 MCAR § 2.3132 Measures. When the Emergency Operating Center determines that the measures listed in 6 MCAR § 2.3131 A.-H. have not been or will not be sufficient to eliminate the shortage of motor fuel, the Governor may choose to implement any of the following measures.

A. Vehicle permit-sticker measure.

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

2. Applicability.

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

b. A vehicle rented or leased for a period exceeding seven (7) days shall be considered owned by the lessee for purposes of this measure.

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

3. Exemptions.

a. The following vehicle classes are not subject to the no-driving-day prohibition:

(1) Single-unit commercial vehicles with six tires or more in contact with the road surface and/or with a gross weight rating of 10,000 pounds or more;

(2) Emergency vehicles;

(3) Cargo, freight and mail hauling by truck, including newspaper deliveries;

(4) Energy production vehicles;

(5) Vehicles directly engaged in agricultural production and farm trucks registered and licensed as farm trucks with the Division of Driver and Vehicle Services of the Division of Public Safety;

(6) Public passenger transportation services;

(7) Motorcycles and mopeds;

(8) Short-term vehicle rentals; and

(9) Such other vehicle classifications that the Governor may determine.

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

c. Vehicle rental agencies shall apply for "exempt" stickers for vehicles rented for periods less than one week. Upon approval of an agency's application, DDVS will issue exempt stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven (7) days must be registered by the lessee.

d. The Governor may waive the requirement for the application and display of exempt permit-stickers for any vehicle class listed under clause a.

B. Recreational vehicle ban measure—Type I.

1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands during limited periods within a declared energy supply emergency.

2. Measure requirements for a Type I recreational vehicle ban.

a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the Division of Driver and Vehicle Services of the Department of Public Safety, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed

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fifteen (15) days during any thirty (30)-day declared energy emergency. A Type I ban may, however, be renewed for the maximum fifteen (15)-day period for each month the energy supply emergency remains in effect.

b. A statement to the news media shall be issued at least seven (7) days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The division director's statement is to receive widest possible coverage to inform the public of the ban.

c. Exceptions. Parties may apply to the Local Energy Conservation Board of appropriate jurisdiction for an exception to this measure. Upon a favorable determination by the board that the applicant is eligible for an exception to the ban, the board shall recommend to the director that an exempt-sticker be issued to the applicant. If the director upholds the board's decision, a sticker will be issued and sent by mail to the applicant, who must prominently display it during the ban.

C. Recreational vehicle ban measure—Type II.

1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters, subject to the state's proprietary interest, shall be prohibited for a period not to exceed fifteen (15) days during any thirty (30) day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum fifteen (15) day period for each month the energy supply emergency remains in effect.

2. A statement to the news media shall be issued at least seven (7) days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The division director's statement is to receive widest possible coverage to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation, or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the local conservation board of appropriate jurisdiction. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3128. Upon a determination by the board that an applicant is eligible for an exception to the ban, the board shall recommend to the director that an exempt sticker be issued to the applicant. If the director upholds the board's decision, he/she shall issue an exempt-sticker to the applicant at the mailing address indicated on the application.

D. Speed limit reduction measure.

1. This measure is intended to conserve motor fuel by reducing the maximum speed limit to 50 mph on all highways in Minnesota.

2. The Governor upon the advice of the Emergency Operating Center shall order the Commissioner of Transportation to set a speed limt of 50 mph for all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to the authority granted him/her under Minn. Stat. § 169.141 (1980).

3. Violation of the maximum limit during a declared energy supply emergency for motor fuel shall carry an additional fine as provided in 6 MCAR § 2.3129.

4. The Emergency Operating Center shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through assignment of additional personnel and increased road surveillance efforts.

E. Driving ban measure.

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

2. Upon the Governor's determination that a one-day driving ban is necessary to reduce the demand for motor fuel in a severe energy supply emergency and a designated no-driving day has been selected, the Emergency Operating Center shall issue a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall detail the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five (5) days prior to the imposition of the driving ban.

3. It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of an emergency driving ban.

4. The following motor vehicle uses (users) shall be exempt from the energy supply emergency driving ban:

a. Out-of-state licensed vehicles.

b. Emergency services,

c. Sanitation services,

d. Aviation ground support vehicles.

e. Vehicles identified as required in 6 MCAR § 2.3131 B.7.f. and used by employees in commuting for the purposes of providing medical care, residential care, telecommunications services, energy production, news reporting, and plant protection.

f. Individuals who require daily medical treatment.

5. Any vehicle registered and licensed by the State of Minnesota and operated during an energy supply emergency driving ban shall prominently display a sticker or tag which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, e.g., police, fire, ambulance, or aviation ground support vehicles. The agency will issue guidelines for identification of exempt vehicles prior to an energy emergency driving ban.

Pollution Control Agency

Notice of Hearing in Ely, Minnesota in the Matter of Proposed Amendments to Minnesota Rule APC 1

Please take notice that on Monday, March 16, 1981, at Vermilion Community College in Ely, Minnesota, at 1 p.m. and at 7 p.m., the Minnesota Pollution Control Agency will hold a public hearing to solicit views and comments about the state ambient air quality standards for sulfur dioxide and ozone.

The Minnesota Association of Commerce and Industry has petitioned the agency to amend the state's air quality standards by adopting less stringent federal standards for sulfur dioxide and ozone. The Minnesota Public Interest Research Group has requested the agency to consider the acid rain problem and opposes the relaxation of the state standards. The agency has not proposed a specific standard but is soliciting public comment on a range of numbers from the existing state standards on the low (more stringent) end to the existing federal standards on the high (less stringent) end.

The hearing on this matter is being conducted by Mr. Howard Kaibel, a hearing examiner with the Office of Administrative Hearings. Mr. Kaibel will preside at the hearing in Ely.

The agency staff has prepared a document called a Statement of Need and Reasonableness, which discusses the relevant information regarding sulfur dioxide and ozone. Five reports are included with the Statement of Need and Reasonableness. Report 1 discusses health and welfare effects of sulfur dioxide and provides some background information on sulfur dioxide. Report 2 provides similar information on ozone. Report 3 presents estimates on the costs to Minnesota industry to meet the various standards. Report 4 describes some of the minor changes in the language of rule APC 1, the rule of the agency that contains the state ambient air quality standards. Report 5 is the staff's discussion of the acid rain phenomenon. The Statement of Need and Reasonableness, including the five Reports, is available for review at the library at Vermilion Community College.

Members of the agency staff will be available in Ely to provide further information about the air quality standards and the data in the staff Reports. Persons who wish to submit written statements or make oral presentations should plan to attend one of the sessions. Persons who are unable to attend the hearing but wish to submit comments should mail their comments to Mr. Kaibel, Office of Administrative Hearings, 1745 University Avenue, Saint Paul, Minnesota 55104, as soon as possible.

If there are any questions, please contact Richard Sandberg in the Division of Air Quality, Minnesota Pollution Control Agency, at (612) 296-7274.

February 23, 1981

Louis J. Breimhurst
Executive Director

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Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Concerning Draft Rules Revising the Plan Governing Actions and Procedures during A Fuel Oil Supply Emergency

Notice is hereby given that the Minnesota Energy Agency is seeking information or opinions from outside the agency on appropriate measures to use during a fuel oil supply emergency to reduce the fuel oil shortage and to assure equitable distribution of existing supplies. Minn. Stat. § 116H.09 requires the Minnesota Energy Agency to revise by rulemaking plans for conservation and allocation of fuel during an energy supply emergency. The rules discussed below are for use during an energy supply emergency resulting from a shortage of fuel oil, particularly home heating oil and diesel fuel.

Background

During the fall of 1979, the Energy Agnecy began development of a revised plan of action for use during a fuel oil supply emergency. Comments were solicited and meetings were held to gain public participation in the plan development. The new Fuel Oil Emergency Action Plan was completed in February, 1980.

The agency is beginning the rulemaking process to develop fuel oil emergency rules, based on the new Fuel Oil Emergency Action Plan. The rules will govern the activities of the state during, or immediately prior to, a declared energy supply emergency resulting from a fuel oil shortage. In contrast, the plan also maps out activities designed to mitigate or prevent a serious shortage will in advance of an actual emergency. Thus, the fuel oil emergency rules would come into effect only after the State has already requested Minnesota citizens to employ various voluntary conservation measures, and these voluntary measures fail to alleviate the shortage.

Draft rules have been developed and are published following this notice. The agency believes this specific proposal will help focus discussion and elicit public input. Written comments are invited and should be submitted by October 22, 1980. The agency will then draft and publish proposed rules.

Key Issues

Several portions of the revised Fuel Oil Emergency Plan have been expanded in the Draft Rules. In addition, the Draft Rules contain several new sections. The Energy Agency is particularly interested in receiving comments on the following important changes and additions:

1) § 2.3105 B. Priority ranking of users.

This rule more specifically details the criteria and priority ranking developed in the revised plan. In addition, it specifies the procedure for delivery of fuel oil to users based on priority ranking.

Fuel oil suppliers are charged with delivering fuel oil according to these priorities. Does this charge place too heavy a burden on fuel oil suppliers during an energy emergency?

2) § 2.3105 C.1.-C.2. Measures.

This rule includes mandatory measures that may be enacted during an emergency situation. The agency hopes to receive comments on the potential effectiveness of these measures and suggestions for additional fuel saving measures that may have been omitted from this draft.

Included in these measures is the authority to curtail delivery of fuel oil supplies to specific industries during a severe shortage. The order of curtailment would be based on the industry's energy consumption per employee. Is this a workable system? Is there a more equitable way to accomplish this fuel oil savings?

3) §§ 2.3107-2.3109 Appeals system.

The appeals system may follow three tracks: (a) Appeals of priority status through the Fuel Allocation Rules of Procedure (b) Appeals of mandatory measures except fuel oil curtailment, and (c) Appeals of fuel oil curtailment.

This system was devised to avoid making unrealistic demands on any single appeals board during an emergency situation. Has the Agency accomplished this goal? Is the current system understandable and timely for the potential appellant?

All interested or affected parties are invited to submit written comments addressed to:

Abigail McKenzie, Emergency Rules Analyst
Minnesota Energy Agency
Suite 980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Comments must be written and received by October 22, 1980 in order to be considered.

MEA Exh 21

Draft Rules

Draft Rules Governing Procedures and Measures To Reduce Demand and Increase Supply of Fuel Oil During a Fuel Oil Supply Shortage.

6 MCAR § 2.3101 Purpose of rules. The purpose of these rules is to specify procedures to be used during a fuel oil supply emergency and to specify measures that may be employed to reduce demand for and increase supply of fuel oil and the method of implementing the measures.

6 MCAR § 2.3102 Applicability of rules. The rules shall apply:

A. during a declared fuel oil supply emergency (see 6 MCAR § 2.3105);

B. during a declared fuel oil supply alert (see 6 MCAR § 2.3104); and

C. to the Minnesota Energy Agency when the agency is preparing to recommend that a fuel oil supply alert or fuel oil supply emergency be declared.

6 MCAR § 2.3103 Definitions.

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included. (a) All industry code numbers included in Division A, Agriculture. Forestry and Fishing, except as specified in paragraph 2 of this section. (b) All industry code numbers included in Major Group 20. Food and Kindred Products, of Division D. Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and (c) All the following other industry code numbers:

1474 Potash, Soda and Borate Mineral (Potash mining only);
1475 Phosphate Rock;
2141 Tobacco Stemming and Redrying;
2411 Logging Camps and Logging Contractors;
2421 Sawmills and Planing Mills;
2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);
2873 Nitrogenous Fertilizers;
2874 Phosphatic Fertilizers;
2875 Fertilizers, Mixing Only;
2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;
4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);
4971 Irrigation Systems (for farm use); and
5462 Retail Bakeries, Baking and Selling.

2. Activities excluded. (a) All the following industry code numbers, otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

0742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

0782 Lawn and Garden Services; and

0849 Gathering of Forest Products, Not Elsewhere Classified;

C. "Btu" means British thermal unit, a common unit of energy measurement which is used in these rules for comparative purposes;

D. "Commercial buildings" means buildings all of whose occupants are engaged in commerce, unless residential occupants have separate heating controls;

E. "Communications" means telecommunications including the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communication common carrier, newspaper production and distribution, excluding sales and routine administrative activities;

F. "Consumer" means a person that consumes natural gas, electricity, middle distillate, residual, or propane;

G. "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 the Federal Fuel Allocation Program;

H. "Demand" means that quantity of products or services for which there are willing and able purchasers;

I. "Division" means the Division of Emergency Services;

J. "Electric utilities" means any entity engaged in the generation, transmission, or distribution of electric energy for sale;

K. "Emergency services" means law enforcement, fire fighting, snow removal, emergency medical services, search and rescue activities, telecommunications services and utilities services;

L. "Energy production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. It also includes the construction of facilities and equipment used in energy production, such as pipelines, power plants, transmission lines and similar capital goods. Excluded from this definition is electrical generation whose power source is petroleum based;

M. "Environmental standards" means those laws and regulations, both federal and state, intended to protect the environment;

N. "Essential transportation" means emergency vehicles, public transportation including bus, rail, taxi, and van pool services, energy distribution such as heating oil delivery, transportation of perishable food items and postal delivery and mail hauling;

O. "Forecast" means a projection of future demand or supply for some specified time period;

P. "Fuel oil" means any liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power;

Q. "Health and residential care facilities" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

R. "Home owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

S. "Middle distillate" means any derivatives of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which have a fifty percent boiling point in the ASTM D86 standard distillation test falling between 371° and 700°F. Products specifically excluded from this definition are kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and all specialty items such as solvents, lubricants, waxes, and process oil;

T. "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;

U. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage from inclement weather;

V. "Residence" means the place where a natural person or persons actually live, including buildings being used as emergency housing facilities;

W. "Residual fuel oil" means the fuel oil commonly known as: 1. No. 4, No. 5 and No. 6 fuel oils; 2. Bunker C; 3. Navy Special Fuel Oil; and 4. all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

Y. "Sanitation services" means the collection and disposal for the public of solid wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated;

Z. "Shortage" means a situation in which demand exceeds supply;

AA. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs, pursuant to 10 Code of Federal Regulations § 211.17;

BB. "Supplier" means any firm or any part of a subsidiary of any firm other than the Department of Defense which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers; and

CC. "Tenant" means any person who occupies but does not own a dwelling under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.

6 MCAR § 2.3104 Fuel oil supply alert. A fuel oil supply alert will inform the citizens of a potential fuel oil shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. A fuel oil supply alert may be declared in the event that Agency forecasts indicate a reasonable likelihood that fuel oil supply will not be adequate to meet fuel oil demand, within a period of 6 months from the date of declaration.

B. The director of the Minnesota Energy Agency shall have sole responsibility for declaring a fuel oil supply alert.

6 MCAR §2.3105 Fuel oil supply emergency. A fuel oil supply emergency is a state of declared emergency resulting from a shortage of fuel oil.

A. Determination of an energy emergency. Responsibilities of each organization are as follows:

1. Minnesota Energy Agency. When agency forecasts of short-term demand for fuel oil exceed forecasts of short-term supply of fuel oil within a three month period of time, the director of the agency may recommend that an energy supply emergency be declared.

2. The Executive Council or Legislature. The Executive Council, consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State, or Legislature has responsibility for declaring an energy supply emergency.

a. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Declaration of an energy supply emergency must be renewed every 30 days.

b. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division of Emergency Services, the Energy Agency, and the Secretary of State.

B. Priority ranking of users.

1. In an energy supply emergency resulting from a fuel oil shortage, suppliers shall deliver fuel oil according to the system of priorities set out below. Higher priority users shall have legitimate needs filled before lower priority users.

a. First priority users are fuel oil users with no available alternative fuel whose continued operation is essential for the health and safety of the citizens of the state. These include:

1. Health and residential care facilities;
2. Residences;
3. Essential transportation;
4. Plant protection;
5. Emergency services;
6. Communications;
7. Energy production; and
8. Agriculture.

b. Second priority users are those users whose continued operation is necessary for the health and safety of the citizens of the State but who have an available alternative source of fuel, such as residual oil or coal, the use of which would violate environmental standards.

c. Third priority users are those users whose continued operation is not essential for the immediate health and safety of the citizens of the State. These include:

1. Schools;
2. Government;
3. Commerce;
4. Industry; and
5. Cargo and freight hauling.

Within this category preference will be given to users who have no available alternative source of fuel; and users who have demonstrated that they have engaged in energy saving measures.

d. Users who have an available alternative source of fuel the use of which would not violate environmental standards will not receive fuel oil during a fuel oil supply emergency.

2. Major refineries and supplier representatives will be notified of the state of emergency by Energy Agency staff and supplied with a written description of the priority system for distribution, within two (2) days of a declared emergency.

3. The Emergency operating center shall provide services necessary to answer questions and resolve conflicts regarding the priority ranking of individual firms or entities.

4. Appeals of priority status shall be made through 6 MCAR §§ 2.0101-2.0107 Fuel Allocation Rules of Procedure.

C. Measures.

1. Upon declaration of a fuel oil energy supply emergency, the Governor shall select from the following measures to reduce the shortage.

a. Commercial buildings may be ordered to comply with the Emergency Building Temperature Restrictions (EBTR), pursuant to the Energy Policy and Conservation Act of 1975, 201 (A) and (B), (42 USC 6201). (Buildings which are exempted under EBTR shall be exempted from this rule.)

b. Home owners and renters may be requested to voluntarily turn their thermostats back to between 62°F and 66°F during the day and 52°F and 58°F during the night and during unoccupied hours, and may be requested to set back water heater thermostats to between 105°F and 115°F (or the lowest setting).

c. Citizens may be requested to refrain from driving diesel powered automobiles.

d. Voluntary industrial, commercial, government, and residential conservation targets may be established to reduce energy usage, including electricity and natural gas, especially during periods of peak usage.

e. Mandatory industrial, commercial, government targets may be established to reduce energy usage, including electricity and natural gas, especially during peak usage periods.

f. Fuel oil suppliers may be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

g. Commercial and industrial establishments may be requested to voluntarily reduce their hours of operations where this action saves energy.

h. Smoking within buildings may be prohibited and reduction of the amount of outside air entering building ventilation systems may be ordered.

i. All electric utilities with oil-fired generating facilities may be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the Mid-Continent Area Power Pool when power from nuclear or coal-fired generating facilities is available.

j. Weight limits on trucks may be raised to a uniform level of 80,000 lbs. for all roads.

k. Business and industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil may be ordered to convert to the residual oil during the crisis period, unless such action is specifically prohibited by the Pollution Control Agency.

l. Commercial and industrial users may be requested to voluntarily release fuel oil from inventory supplies; and use fuel allocation rules of procedure (See 6 MCAR §§ 2.0101-2.0107) to allocate voluntarily released inventory.

(1) Under this system suppliers shall be directed to deliver fuel oil supplies according to the system of priorities described in § 2.3105 B.

(2) First priority users shall receive set-aside and voluntary inventory releases necessary to maintain health and safety for as long as such supplies last.

m. Business, industrial and government intitutions may be requested to close nonessential buildings.

2. When the agency determines that actions listed in 6 MCAR § 2.3105 C.1. have not or will not be sufficient to approximately equalize supply and demand the following options may be selected by the Governor:

a. Owners/operators of commercial, industrial, and government buildings may be ordered to reduce heating thermostats to 62°F during the day and 50°F at night or during unoccupied periods.

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

c. Delivery of fuel oil supplies to specific industries, including commerce and government, may be ordered to be curtailed according to the following criteria. An order shall be in writing and shall be delivered by registered mail to firms in the industry and area suppliers.

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

(2) Users who have first priority status under 6 MCAR § 2.3105 B. will be the last to be curtailed.

(3) A firm may be exempted from curtailment of delivery of fuel oil supplies if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975 if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average. Exemption may be granted pursuant to 6 MCAR § 2.3109 B.

(4) The order of curtailment and estimated energy-labor ratio will be published annually in the *State Register* during the month of October.

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

3. Actions available for implementation under 6 MCAR § 2.3105 C.1. will remain available under 6 MCAR § 2.3105 C.2.

D. Operating organization during an emergency.

1. Energy emergency operating center. During a declared energy emergency, the Division of Emergency Services and the Minnesota Energy Agency will set up an energy emergency operating center.

a. The director of the emergency operating center will be the Director of the Division of Emergency Services. She/He shall direct the implementation of the emergency plan.

b. The emergency operating center shall be located at a site designated by the director of the center and staffed by personnel from the division, the agency and other state agencies as deemed necessary by the director of the center. While on detail at the center, these personnel shall be primarily responsible to the director of the center.

2. Energy Agency.

a. The agency shall assist the division by analyzing the fuel oil situation, evaluating alternative courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

b. The agency shall determine and recommend to the Governor the least restrictive measures specified under 6 MCAR § 2.3105 C.1.-2. capable of eliminating the shortage of fuel oil.

3. Emergency services.

a. The division shall have the responsibility for implementing the energy emergency plan and coordinating the emergency operations of the governmental organizations involved in the energy emergency program.

b. The division shall use a network of regional and local coordinators who would be responsible for coordinating the emergency operations with the different geographic areas of the State.

c. By January 1, 1982, the division shall develop procedures to monitor compliance with the mandatory measures listed in 6 MCAR § 2.3105 C.1.-2.

4. Pollution Control Agency. By January 1, 1982, the Pollution Control Agency, with the cooperation of the Energy Agency, shall develop standby plans and procedures for the administration and possible modification of pollution control standards during an energy emergency.

5. Other organizations with important responsibilities.

The Division of Emergency Services shall have the authority to call on any state agency or cooperating organization, such as the Red Cross, if its services are deemed to be necessary.

6 MCAR § 2.3106 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1978).

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

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

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

6 MCAR § 2.3107 Local energy conservation board.

A. A local energy conservation board shall be created to hear requests for exemption from mandatory measures listed in 6 MCAR § 2.3105 C.1.-C.2, except 2.c., in each county, in each city of the first class and in each city of more than one thousand population in St. Louis county.

B. The chairman of the county board of commissioners shall appoint a five member county local energy conservation board to include, if possible, the county attorney, the county fuel coordinator, a health professional, the county director of Emergency Services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of Emergency Services are the same person, the fifth member shall be selected from the public.

C. Where appropriate under 6 MCAR § 2.3107 A., the chairman of the city council shall appoint a five member municipal local energy conservation board to include the city attorney, the city fuel coordinator, a health professional, the city director of emergency services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of Emergency Services are the same person, the fifth member shall be selected from the public.

D. The appointed members shall not be named until after the declaration of an emergency. In making the appointments, the chairman of the county board of commissioners and chairman of the city council shall make every reasonable effort to avoid any conflicts of interest.

E. Three members shall constitute a quorum.

6 MCAR § 2.3108 Fuel oil curtailment review.

Each appeal of an order to curtail delivery of Fuel Oil Supplies (6 MCAR § 2.3105 C.2.c.) shall be decided by the State Hearing Examiner's Office.

6 MCAR § 2.3109 Appeals.

A. Each appeal from an action taken pursuant to a declared energy supply emergency shall be in writing and shall be signed by the appellant. Each appeal shall state:

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

2. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;

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

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

B. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6 MCAR § 2.3105 C., except 2.c., shall be sent to the local energy conservation board at the county courthouse, or the mayor's office, whichever is appropriate.

2. Appeals of an order to curtail delivery of supplies shall be sent to the Hearing Examiner's Office, Room 300, 1745 University Avenue, St. Paul, Minnesota 55101.

C. Appeals of an order to curtail delivery of fuel oil supplies based on conservation effort, described in 6 MCAR § 2.3105 C.2.c. shall be in writing and shall be signed by the appellant. In addition to the information required by 6 MCAR § 2.3109 A, each appeal shall include:

1. A detailed description of energy savings resulting from conservation efforts since 1977; and

2. calculation of the firm's energy-labor ratio.

D. Timing and procedures.

1. Within two (2) calendar days after receipt of an appeal, the hearing examiner or local energy conservation board, whichever is applicable, or his/her designate shall set a hearing date. The date of hearing shall not be more than five (5) calendar days after the receipt of an appeal. The chairman or hearing examiner or his/her designate shall notify all affected persons, either verbally or in writing, of the appeal and the time and place for the hearing not less than two (2) calendar days before the hearing.

2. The parties to an appeal shall be the appellant and the emergency operating center. Any party may be represented by counsel, but need not be.

3. The order to curtail delivery of fuel oil supplies shall remain in effect during an appeal of such an order.

4. 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. The hearing examiner or local energy conservation board may dispose of an appeal adversely to a party which defaults. Disposition of default shall occur only after the party against whom default is proposed, having received timely notice, fails to appear. The hearing examiner or local energy conservation board may order a prehearing 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 prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

5. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of an energy supply emergency.

E. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the hearing examiner or local energy conservation board, at which hearing the parties may present and cross-examine witnesses and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal. Evidence must be offered to be considered.

2. The hearing examiner or local energy conservation board shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The chairman of the local energy conservation board or the hearing examiner shall use the procedure of the state hearing examiner's office at the hearing. The hearing examiner or local energy conservation board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

F. Decision.

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

2. Within two (2) calendar days after the hearing is closed, the Hearing Examiner shall issue a final decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal.

3. Within two (2) calendar days after the hearing is closed, the local energy conservation board shall issue a recommended decision in writing, including the findings and conclusions on which the decision is based, a copy of which shall be given to all parties to the appeal. The division director may accept or overrule the board's decision, or he/she may remand the appeal for further hearing on specified parts. His/her decision shall be in writing and served on all parties.

4. The appellant may seek judicial review of a final decision of the division director or the hearing examiner.

Minnesota State Retirement System

Special Meeting, Board of Directors

Special meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, September 19, 1980 at 9:00 a.m. in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive a report regarding the Data Base system, revision of board rules and any other matters to come before the board.

Department of Transportation

Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 261, Located at St. Louis Park, Minnesota

Notice of Application and of Opportunity for Hearing

Notice is hereby given that the Chicago and North Western Transportation Company, with Attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. § 219.741 to retire and remove ICC Track No. 261, located at St. Louis Park, Minnesota.

Any person may file a written objection to the action proposed by the petitioner by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before October 6, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Energy Agency Fuel Allocation Division

Notice of Intent to Solicit Outside Opinion Concerning the Development of a State Emergency Plan Relating to Gasoline Conservation

Notice is hereby given that the Minnesota Energy Agency is seeking information, opinion, and comments from sources outside the agency in preparing a state emergency conservation plan for energy emergencies. The agency has coinciding state and federal obligations to prepare energy emergency plans. The information received will be used to satisfy the agency's obligations under both Minn. Stat. § 116H.09 and the federal Emergency Energy Conservation Act of 1979 (Pub.L. 96-102).

Under the state authority, the agency is revising its existing emergency conservation and allocation plan pursuant to 1979 amendments to § 116H.09. The federal Emergency Energy Conservation Act of 1979 requires the governor of each state to submit to the Secretary of Energy a state energy emergency plan 45 days after the federal publication of conservation targets.

The state law does not precisely define an energy supply emergency. Under the federal Emergency Energy Conservation Act of 1979 (hereinafter "the Act"), an energy emergency is defined as an existing or imminent, severe interruption in national energy supply or a situation in which reductions in domestic demand are required to fulfill international energy agreements, as determined by the President of the United States pursuant to the Act.

All interested or affected persons or groups may request a copy of possible amendments to the Emergency Energy Plan. All statements of information and comment must be received by February 27, 1980. All written or oral comments should be addressed to:

Dixie Lee Diehl
Manager, Fuel Allocations
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-9093

Department of Transportation

Notice of Application and Opportunity for Hearing Concerning Petition of Chicago and North Western Transportation Company for Authority to Retire and Remove ICC Track No. 382 at Janesville, MN

Notice is hereby given that the Chicago and North Western Transportation Company, with attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota (55402) has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741 and 218.041, subd. 3 (10) to retire and remove I.C.C. Track No. 382 located in Janesville, Minnesota.

The petition recites among other matters that: "The subject track is no longer needed for rail transportation service, constitutes a continuing and burdensome maintenance expense, and is an unnecessary safety hazard. The track is not used at the present time, and there is no present prospect that the track will be needed in the future. The only shippers, patrons or members of the public who might have any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years, is Martin Schlie, (property owner, P.O. Box 352, Janesville)."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before March 3, 1980. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a party to this matter must submit a timely petition to intervene to the hearing examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The

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PUBLIC MEETINGS

STATE EMERGENCY GASOLINE CONSERVATION PLAN

DATES, TIMES AND LOCATIONS

CONGRESSIONAL DISTRICT	TIME AND DATE		LOCATION
1	7:00 p.m.	Wednesday April 23	Room S 110 Science Building Rochester Community College Rochester, Minnesota
2	7:00 p.m.	Thursday April 24	Room C 121 Trafton Science Center Mankato State University Mankato, Minnesota
3	7:00 p.m.	Tuesday April 29	Cafeteria Eisenhower High School Hopkins, Minnesota
4	1:00 p.m. and 7:00 p.m.	Wednesday April 30	Room 83 State Office Building St. Paul, Minnesota
5	7:00 p.m.	Thursday May 1	Auditorium Level A Hennepin Co. Gov. Center Minneapolis, Minnesota
6	7:00 p.m.	Monday May 5	Room L 10 Library Building Willmar Community College Willmar, Minnesota
7	7:00 p.m.	Tuesday May 6	Commissioners Hearing Room Becker Co. Courthouse Detroit Lakes, Minnesota
8	7:00 p.m.	Wednesday May 7	Central Lecture Hall Duluth AVTI Duluth, Minnesota

Energy Agency

Notice of Intent to Solicit Outside Information Concerning the Development of Emergency Rules Which Could Be Implemented during A Fuel Oil Shortage

Notice is hereby given that the Minnesota Energy Agency is seeking comments and opinions on various measures that may be included in a management program during a fuel oil shortage. The following is a list of measures which have been suggested as possible measures for an energy emergency management strategy. Therefore, the following is not a final list. Furthermore, any mandatory emergency measure which is adopted as part of the management strategy can be implemented only after the Executive Council specifically selects it for implementation, and this selection can be made only after the Governor has declared an energy emergency. The Division of Emergency Services has the responsibility to implement measures selected by the Executive Council.

The Energy Agency invites comments on the possible measures listed in this notice. The Energy Agency welcomes any comments on the effectiveness, appropriateness, proper timing, and proper sequencing of the listed measures. Comments should be written and mailed/delivered to the Energy Agency by November 20, 1979, or presented at one of the following public meetings:

		Open House	Meeting
November 13	New Ulm Public Library	2-4 p.m.	7:30 p.m.
November 14	Rochester Community College	2-4 p.m.	7:30 p.m.
November 15	Weyerhauser Room Room 15 Minnesota Historical Society	3-5 p.m.	7:30 p.m.
November 16	Alexandria County Courthouse Civil Defense meeting room	2-4 p.m.	7:30 p.m.
November 19	Hibbing Community College	2-4 p.m.	7:30 p.m.
November 20	Crookston New City Hall	2-4 p.m.	8:00 p.m.

Overview of Fuel Oil Emergency Strategy

The supply of fuel oil from refineries in Minnesota and from pipelines to Minnesota is not sufficient during winter months to meet demand during winter months. Therefore, Minnesota relies on inventories accumulated during summer months to meet demand during winter months.

The Minnesota Energy Agency will monitor depletions in Minnesota inventories. If inventories are being drawn down too fast, voluntary conservation practices will be urged by government officials. In addition, owners of large private fuel oil inventories will be asked to effect transfer of oil to areas of critical need. If such voluntary measures do not sufficiently slacken depletions in inventories, the Governor may impose legal rules through his energy emergency powers. Since the majority of fuel oil is used for space heating in residential and commercial buildings, the following suggestions concentrate on actions that could be taken by these two sectors. In the following list, Sections I and II describe voluntary measures that may be requested. Sections III, IV, V, and VI contain suggestions on legal rules that governor could impose during an emergency.

I. Voluntary Conservation

Suggestion #1. Homeowners and apartment renters/owners will be asked to make the following setbacks in thermostats:

Day: 62°-66°
Night: 52°-58°
Unoccupied hours: 52°-58°
Water: 105°-115° (or low setting)

Suggestion #2. An energy alert program will be instituted to reduce energy consumption on days of peak use and thereby reduce the use of fuel oil as a back-up fuel.

Suggestion #3. Electric customers will be strongly urged to reduce electric use during times when electric utilities are using oil-fired peaking plants.

a) by electric utilities
b) by governor and or other government officials if needed

Suggestion #4. Owners operators of commercial and government buildings will be asked to completely prohibit smoking in their buildings and reduce fresh air ventilation to 5 to 10 cubic feet per minute per person.

Suggestion #5. Owners operators of commercial and government buildings will be asked to investigate whether outside air can be introduced to replace the operation of "chillers". Implementation of this procedure will be requested if such implementation is deemed appropriate.

Suggestion #6. In an extreme shortage, owners/operators of commercial and government buildings will be requested to reduce heating thermostats to 62° day/55° night if such reductions will reduce energy consumption.

Suggestion #7. All building owners/operators will be asked to conduct extensive in-house studies and to consult with other building owners in determining how energy consumption can be reduced.

II. Voluntary Inventory Management

Suggestion #8. Owners of large private inventories of fuel will be asked to assist in the alleviation of fuel oil shortages by either:

1. Eliminating refills of inventory until inventory levels are reduced to a one week supply; or
2. Arranging for transfer of fuel oil from inventory to areas of critical need.

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III. Mandatory Conservation Measures

Suggestion #9. Commercial buildings will be ordered to follow federal Emergency Building Temperature Restrictions after federal rules end on April 16, 1980.

Suggestion #10. Smoking will be completely prohibited in commercial and government buildings, and such buildings will be ordered to reduce ventilation to 2.5 to 5 cubic feet per minute per person.

Suggestion #11. Unless exempted for health reasons, residential thermostats will be reduced to 65° day 60° night and residential water heaters will be reduced to 105°. (Such suggestions raise serious questions on the government's ability to effect public acceptance and enforcement of these rules.)

IV. Other Measures

Suggestion #12. If electric utilities need to use oil for electric generation, they will be asked to use oil of a quality not suitable for home heating.

Suggestion #13. Weight limits on trucks shall be temporarily raised during part of the winter months.

Suggestion #14. Business, industrial and governmental institutions now burning light oil which have the capability to burn heavier oil will be required to convert to the heavier oil during the crisis period.

V. Temporary Modification of Environmental rules

Suggestion #15. Temporarily suspend the limitations on sulfur dioxide emissions for large oil users to reduce demand for low sulfur oil.

Suggestion #16. Reduce oil used for electrical generation by temporarily allowing those electrical generating plants that use other fuels and operate at low capacity factors due to environmental restrictions to operate at higher capacity factors.

VI. Curtailment/Allocation

Suggestion #17. Commercial, industrial, and government buildings shall be closed on a priority basis after considering their effects on the state's economy, employment, environment, health, safety, welfare, and fuel situation.

Suggestion #18. Distributors of fuel oil will be asked to distribute fuel to end users according to the following priorities:

1) Protection of Health
2) Protection against Economic Hardships

***

Other measures such as bans on lighting and reduction in business hours have been considered but not listed because of the insignificant savings they would effect. The Minnesota Energy Agency emphasizes that this is a list of possible measures on which the Energy Agency solicits comments. Written comments which are submitted will become part of the record.

Questions and comments should be addressed to:

David Buller, Manager of Policy Analysis
Minnesota Energy Agency
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101
(612) 297-2335

Ethical Practices Board

Notice of Intent to Solicit Outside Opinion Regarding a Proposed Amendment to Campaign Finance Rules Concerning Association Sample Ballots

Notice is hereby given that the Minnesota Ethical Practices Board is considering a revision to Permanent Campaign Finance Rule 9 MCAR § 1.0008 by adding a subsection defining an approved expenditure when an association, other than a political party unit, endorses a candidate, and the association subsequently prepares and distributes a sample ballot containing a candidate's name.

Written comments concerning this matter may be submitted to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155 until November 26, 1979. Oral comments may be telephoned to the Ethical Practices Board, 612-296-5148 from 8:00 a.m. to 4:30 p.m.

Department of Labor and Industry Prevailing Wage Division

Notice of Prevailing Wage Rates for Highway Construction

Minn. Stat. § 177.44 requires the Commissioner of Labor and Industry to certify, at least once a year, the prevailing wage rates for highway construction under contracts based on bids as provided for in Minn. Stat. § 161.32. Title 8, Minnesota Code of Agency Rules, Section 1.8010 (8 MCAR § 1.8010) requires notice of those certifications to be published in the *State Register*.

On November 5, 1979, the Commissioner certified wage rates for highway construction for 44 counties in Minnesota. Those counties are:

person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has 30 days to file written objections with the Commissioner of Agriculture regarding the issuance of This Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15 for the purpose of revoking, amending, or upholding this registration.

March 13, 1980

Mark W. Seetin
Commissioner of Agriculture

Notice of Special Local Need Registration for Evershield RTU-1050

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on March 13, 1980 issued a Special Local Need Registration for Evershield RTU-1050 Seed Protectant, manufactured by Cargill, Inc., Minneapolis, Minnesota, 55440.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

This Special Local Need Registration permits the use of this pesticide on small grains as a seed protectant from seedling diseases, smut and bunt.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN #MN 80-0005) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
(612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has 30 days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15 for the purpose of revoking, amending, or upholding this registration.

March 13, 1980

Mark W. Seetin
Commissioner of Agriculture

Energy Agency Fuel Allocation Activity

Notice of Intent to Hold Public Meetings on Emergency Gasoline Conservation and Allocation Measures

Notice is hereby given that the Minnesota Energy Agency will conduct public meetings to discuss emergency gasoline conservation measures. The purpose of the meetings will be to seek suggestions, opinions and comments from members of the public on possible emergency measures to include in the State Emergency Gasoline Conservation Plan. The plan is being prepared to satisfy the agency's obligations under Minn. Stat. § 116H.09, and the federal Emergency Energy Conservation Act of 1979 (Public Law 96-102).

The following schedule lists times, dates and location of public meetings to be held between April 23, 1980, and May 7, 1980:

Congressional District	Time and Date			Location
1	7:00 p.m.	Wednesday	April 23	Room S 110 Science Building Rochester Community College Rochester, Minnesota
2	7:00 p.m.	Thursday	April 24	Room C 121 Trafton Science Center Mankato State University Mankato, Minnesota
3	7:00 p.m.	Tuesday	April 29	Cafeteria Eisenhower High School Hopkins, Minnesota
4	1:00 p.m. and 7:00 p.m.	Wednesday	April 30	Room 83 State Office Building St. Paul, Minnesota

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Congressional District	Time and Date			Location
5	7:00 p.m.	Thursday	May 1	Auditorium Level A Hennepin Co. Gov. Center Minneapolis, Minnesota
6	7:00 p.m.	Monday	May 5	Room L 10 Library Building Willmar Community College Willmar, Minnesota
7	7:00 p.m.	Tuesday	May 6	Commissioners Hearing Room Becker Co. Courthouse Detroit Lakes, Minnesota
8	7:00 p.m.	Wednesday	May 7	Central Lecture Hall Duluth AVTI Duluth, Minnesota

Following a brief agency presentation at the meeting, the public will have an opportunity to present oral and/or written comments. Additional written comments and materials may be sent to: Dixie Diehl, Fuel Allocation, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. All comments should be received by May 14, 1980.

The conservation plan may include a combination of voluntary and/or mandatory measures as well as supply management programs. Numerous potential measures have been identified from various sources including the general public. Each of these measures will be subjected to detailed analysis prior to the public meetings. Criteria used to analyze each measure will include potential energy savings, equity, immediacy of impact, ease of administration, cost to the consumer and implementation cost. Measures selected for the plan will be those which represent the state's most effective, equitable and cost-effective response to energy emergency conditions. Potential measures identified to date are briefly summarized below. Where available, preliminary estimates of energy savings are provided. For comparative purposes, it should be noted that average gasoline consumption in Minnesota totals approximately 46,300,000 gallons per week.

Possible Voluntary Conservation Measures

Public Information Measures: Public information measures would include multi-media information and education programs implemented at state, regional and local levels. These measures would inform the public about ways to conserve gasoline including: a) availability of car pools, van pools, and mass transit in their area, and b) ways to improve mileage through better auto maintenance and driving practices. The extent to which public information measures could result in energy savings depends on the size of the program and the level of voluntary conservation by the public. The potential savings through improved vehicle operation and maintenance for just 40% of vehicles licensed to operate in Minnesota is 275,000-350,000 gallons per day. Increased car and van pooling encouraged by public information could save additional gasoline.

Employer-based Travel Program: Although targeted toward large employment centers this measure would be designed to reduce work-related travel of employees throughout the state. This measure could include encouraging employers to develop or increase participation in employee ride-sharing programs, and offer special parking incentives to employees who car pool and van pool.

Employers could also promote mass transit use through the sale of bus passes and coupons by using payroll deduction plans to prepay bus fares, or by actually subsidizing part of the bus fares for employees.

Existing van pool programs in Minnesota involve nearly 400 van pools and contribute an average savings of approximately 5,986 gallons per week day. The formation of 100 additional van pools would bring the total savings to more than 7,626 gallons per week day (based on an estimate of 16.4 gallons saved per van pool per day.) Each additional car pool formed would save approximately 1.5 gallons of gasoline per day. Increased transit usage could save additional fuel.

Establish Bicycle Routes: This measure is designed to encourage use of bicycles in lieu of automobile travel for commuting trips, and would include designating bicycle routes which parallel main commuter travel corridors. In addition to potential energy savings, this measure would also serve to improve bicycle safety. No savings estimate is available at this time.

Alternative Work Patterns: This measure could include several work day changes that could reduce gasoline consumption. These include: 1) a shorter work week to reduce the total number of commuting trips made; 2) staggered work hours which alter the starting and stopping times of workers in order to reduce congestion during rush hours, and 3) flexible working hours to make it easier for employees to join car pools, van pools or ride the bus. The potential savings of a shorter work week are estimated to be over 1,000,000 gallons per day, assuming no increase in discretionary driving during the non-work day.

Possible Mandatory Measures

Speed Limit Enforcement: This measure could increase energy savings through increased compliance with existing speed limits or by reducing the speed limits further. Estimated savings for 100% compliance with the existing 55 mph speed limit is 60,000-63,000 gallons per day. Strict enforcement of a 50 mph speed limit could save an estimated 134,000-141,000 gallons per day.

One-Day Driving Ban: This measure could reduce consumption of gasoline by prohibiting all passenger vehicles from travel for one 24-hour period or a portion of a day each week. Certain activities such as emergency services, and other activities related to public security, economic output, or public health and welfare would need to be exempted from this measure. Savings from a twenty-four hour driving ban could total an estimated 1,500,000-2,200,000 gallons per weekend day and/or an estimated 3,600,000-5,300,000 gallons per weekday.

Vehicle-use Sticker Program Measure: If implemented, this measure would require all private and business owners of gasoline powered motor vehicles to forego use of their vehicles for one or more days per week, depending upon the severity of the shortage. Vehicle owners would prominently display stickers indicating the day or days on which the vehicle would not be driven. Individuals could select the no-driving day(s). Assuming total compliance, a one-day sticker plan implemented for all registered vehicles could save an estimated 1,000,000-1,200,000 gallons per day. A one-day sticker plan requiring households with more than one car to select the same day for all passenger vehicles could save an estimated 1,200,000-1,900,000 gallons per day.

Increased Parking Fees/Restrictions: This measure consists of two primary options: a) instituting or increasing parking fees at all shopping centers: and b) placing parking restrictions on streets near major activity centers. Both options are aimed at reducing single-occupant vehicle usage and encouraging ride-sharing and transit usage. No estimated savings are available at this time.

Increased Gasoline Taxes: A sharp increase in the cost of gasoline is a proven incentive for reducing gasoline consumption. However, as with other measures, these benefits must be weighed against the economic problems higher costs would cause Minnesotans. Gasoline savings estimates are contingent upon the extent of price increases. For comparative purposes, a 50c per gallon increase in gasoline taxes would result in an estimated energy savings of over 201,000,000 gallons annually.

Gasoline Rationing: This measure would not be included in the state conservation plan because it must be implemented under federal initiative. The Governor of Minnesota has expressed his opposition to gasoline rationing due to the extremely high costs of administration involved and the extreme burden which rationing could place upon Minnesota residents. Gasoline savings resulting from rationing are contingent upon federally established conservation levels.

Reduction in State Government Travel: Several reductions in state government travel have been accomplished in recent years through travel coordination programs which encourage ride-sharing, and by increased use of telecommunications. Current estimated savings are 1,100-1,300 gallons per day.

Possible Mandatory Supply Management Programs

The following supply management programs are designed to relieve lines at service stations and do not represent conservation measures. Thus, no gasoline savings estimates are noted, although a small savings could be reached due to reduction in long distance trips under an odd-even purchase restriction system.

Minimum Motor Gasoline Purchase Requirement: This measure would require a minimum purchase of gasoline for all vehicles. The purchaser would have to pay the dealer for a certain amount even if less gasoline were pumped into the tank. This measure could also include restrictions on filling portable gasoline tanks or containers.

Odd-even Motor Gasoline Purchase Restriction: This measure permits vehicles with license plates ending in an even number to purchase gasoline on even-numbered calendar days and vehicles with odd-numbered plates on odd-numbered days. Some gasoline savings could also occur under the odd-even purchase requirement because it may discourage longer trips.

Flag System: This program would require retail service stations to post uniform, colored flags so that they are clearly visible from the street to indicate the availability of different types of fuel or to indicate that only priority vehicles could purchase gasoline.

Motor Gasoline Supply Availability: This measure would assure that at least one 24-hour full-service emergency road repair station was open every 50 miles, and or charge local governmental units with the responsibility for coordinating schedules of non-24-hour stations to ensure that an orderly, equitable and predictable supply of gasoline is available in the area.

Possible Additional Measures: Public comments received by the agency have suggested additional conservation measures, including increasing the legal driving age, reducing high school student driving, increasing school bus efficiency through reduced extracurricular travel, and closing shopping malls on Sundays. These and other potential measures suggested through public comment will also be analyzed, and information presented at the public meetings.

Ethical Practices Board

Advisory Opinion #61
Re: Constituent Services—Local Officeholder Candidate

Approved by the Ethical Practices Board on March 7, 1980

Issued to:

Bruce Kasden, Mayor
City Hall
Moose Lake, MN 55767

Summary

61. The payments for the newspaper column or postcards will not be considered a campaign expenditure until after sine die adjournment of the legislature in an election year.

The full text of the opinion is available upon request from the office of the State Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, (612) 296-5148.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of
Rules of the Minnesota Energy Agency
Governing Procedures and Measures
to be Used to Reduce Demand and
Increase Supply of Petroleum Products
During an Energy Supply Emergency,
6 MCAR §§ 2.3101-2.3121.

ORDER
FOR
HEARING

IT IS ORDERED this 15th day of June, 1981, that public hearings on the proposed rules be held at the following locations on the dates indicated, commencing at the listed times and continuing until all persons, individually or as representatives of associations or other interested groups, have had an opportunity to be heard.

Room 137 Wilson Hall,
Itasca Community College,
1851 East Highway 169,
Grand Rapids, Minnesota;
August 18, 1981; 2:00 P.M. and 7:00 P.M.

Emergency Operations Center Room,
Law Enforcement Center,
710 South Front Street,
Mankato, Minnesota;
August 20, 1981; 1:00 P.M. and 7:00 P.M.

Large Hearing Room,
7th Floor American Center Building,
150 East Kellogg Boulevard,
Saint Paul, Minnesota;
August 24, 1981; 9:30 A.M. and 7:00 P.M.

IT IS FURTHER ORDERED that notice of the hearings be given to all persons who have registered their names with the Minnesota Energy Agency for that purpose and be published in the State Register.

MINNESOTA ENERGY AGENCY

James H. Mann Deputy Director

MARK MASON
Director

MEA Exh 2

RECEIVED
AUG 6 1981
ATTORNEY GENERAL OFFICE
AMERICAN CENTER OFFICE

ENERGY AGENCY

DATA AND ANALYSIS DIVISION

PROPOSED RULES RELATING TO REDUCING DEMAND AND INCREASING SUPPLY OF PETROLEUM PRODUCTS DURING AN ENERGY SUPPLY EMERGENCY

NOTICE OF POSTPONEMENT AND RESCHEDULING OF HEARINGS

Notice is hereby given that the public hearings on the above encaptioned proposed rules which were originally noticed in 5 S.R. 2110 (State Register, Monday, June 29, 1981) and scheduled to be held on August 18, 1981, in Grand Rapids, Minnesota, August 20, 1981, in Mankato, Minnesota, and August 24, 1981, in St. Paul, Minnesota, have been postponed and rescheduled. The hearings have been rescheduled and relocated to the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 202 Mullins Hall,
Itasca Community College,
1851 East Highway 169,
Grand Rapids, Minnesota.
September 29, 1981; 2:00 p.m. and 7:00 p.m.

Emergency Operations Center Room,
Law Enforcement Center,
710 South Front Street,
Mankato, Minnesota;
October 1, 1981; 1:00 p.m. and 7:00 p.m.

MEA Exh 10

Room G-15, State Capitol Building,
St. Paul, Minnesota;
October 5, 1981; 9:30 a.m. and 7:00 p.m.

All interested or affected persons will have the opportunity to participate. Oral or written data, statements or arguments may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 (612) 296-8104. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

A copy of the rules was previously mailed to all persons on the agency's mailing list and was published at 5 S.R. 2111 (State Register, Monday, June 29, 1981) and is hereby incorporated by reference. One free copy of this notice and the proposed rules may be obtained by contacting David Miller at the Minnesota Energy Agency, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-7043. Additional copies will be available at the door on the dates of the hearings.

The proposed rules set out the procedures and measures the state will use to deal with an energy supply emergency resulting from a shortage of petroleum products, including fuel oils and motor fuels. The rules include many measures which will be available for reducing demand and increasing supply during energy emergency. The rules also set forth the state operating organization for energy emergencies and provide an appeals process for persons aggrieved by actions taken. Priority uses of petroleum products are established.

The agency is authorized to adopt the proposed rules by Minn. Stat. § 116H.08a (1980) and, primarily, Minn. Stat. § 116H.09 (1981).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General). 8

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the hearing examiner. 11a 11b

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of
Rules of the Minnesota Energy Agency
Governing Procedures and Measures
to be Used to Reduce Demand and
Increase Supply of Petroleum Products
During an Energy Supply Emergency,
6 MCAR §§ 2.3101-2.3121.

NOTICE OF HEARING

Notice is hereby given that public hearings on the proposed rules will be held pursuant to Minnesota Statutes section 15.0412, subdivision 4, at the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 137 Wilson Hall,
Itasca Community College,
1851 East Highway 169,
Grand Rapids, Minnesota;
August 18, 1981; 2:00 P.M. and 7:00 P.M.

Emergency Operations Center Room,
Law Enforcement Center,
710 South Front Street,
Mankato, Minnesota;
August 20, 1981; 1:00 P.M. and 7:00 P.M.

Large Hearing Room,
7th Floor American Center Building,
150 East Kellogg Boulevard,
Saint Paul, Minnesota;
August 24, 1981; 9:30 A.M. and 7:00 P.M.

All interested or affected persons will have the opportunity to participate. Oral or written data, statements or arguments may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint

MEA Exh 3

Paul, Minnesota 55104 (612) 296-8104. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

A copy of the proposed rules is attached to this Notice or is published on the pages following this Notice in the State Register. One free copy of this Notice and the proposed rules may be obtained by contacting David Miller at the Minnesota Energy Agency, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-7043. Additional copies will be available at the door on the dates of the hearings.

The proposed rules set out the procedures and measures the State will use to deal with an energy supply emergency resulting from a shortage of petroleum products, including fuel oils and motor fuels. The rules include many measures which will be available for reducing demand and increasing supply during energy emergency. The rules also set forth the State operating organization for energy emergencies and provide an appeals process for persons aggrieved by actions taken. Priority uses of petroleum products are established.

The Agency is authorized to adopt the proposed rules by Minn. Stat. § 116H.08a (1980) and, primarily, Minn. Stat. § 116H.09 (1981).

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report) or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. 11a 11b Any questions regarding the procedures may be directed to the Hearing Examiner.

Dated: June 15, 1981.

MINNESOTA ENERGY AGENCY

James H. Main Deputy Direct

MARK MASON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption)
of Rules of the Minnesota Energy Agency)
Governing Procedures and Measures to be) AFFIDAVIT
Used to Reduce Demand and Increase) OF MAILING
Supply of Petroleum Products During)
an Energy Supply Emergency, 6 MCAR)
§§ 2.3101 to 2.3121.

I hereby certify that on August 5, 1981, I served the attached Notice of Postponement and Rescheduling of Hearings for the above-encaptioned rules by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped and with postage prepaid, on all persons, associations and other interested groups who have requested that their names be placed on file with the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency.

David E. Miller

Subscribed and sworn to before me
this 10th day of August.
Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

MEA Exh 12

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Procedures and Measures to be Used to Reduce Demand and Increase Supply of Petroleum Products During an Energy Supply Emergency, 6 MCAR § § 2.3101-2.3121.

MAILING LIST CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 4:00 P.M., this 10 day of August, 1981.

Nancy G. Hall

Karla V. Sand
Notary

8/10/81
Date

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

MEA Exh 11

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Procedures and Measures to be Used to Reduce Demand and Increase Supply of Petroleum Products During an Energy Supply Emergency, 6 MCAR §§ 2.3101-2.3121.	)))))))	CERTIFICATE OF MAILING

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, Subd. 4, that their names be placed on file with and maintained by the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this agency have been sent a copy of Notice of Hearing and the Proposed Petroleum Supply Emergency Rules by way of 1st Class Mail delivered to the State of Minnesota Central Mailing, Transportation Building, for forward to the U.S. Post Office on 25th day of June, 1981.

David E. Miller

David E. Miller

Karla V. Sand

Notary

7/22/81

Date

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

MEA Exh 6

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of)
Rules of the Minnesota Energy Agency)
Governing Procedures and Measures)
to be Used to Reduce Demand and)
Increase Supply of Petroleum Products)
During an Energy Supply Emergency,)
6 MCAR §§ 2.3101-2.3121.)

MAILING LIST
CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 3:00 P.M., this 17TH day of June, 1981.

Nancy J. Hall

Karla V. Sand
Notary

6/25/81
Date

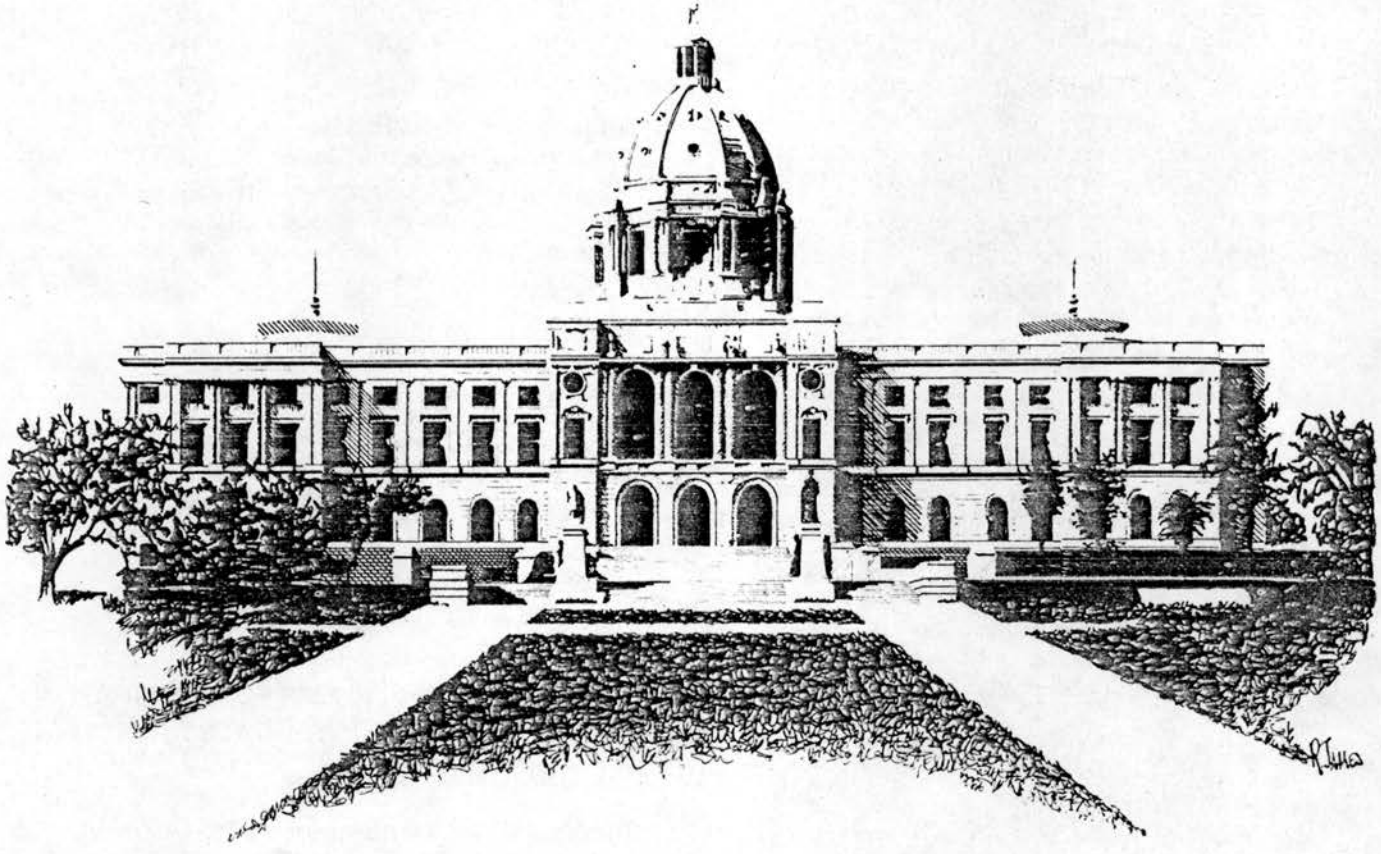
KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

MEA Exh 5

RECEIVED
JUL 23 1981
ADMINISTRATIVE
HEARINGS

STATE REGISTER

STATE OF MINNESOTA



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June 29, 1981

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D. ~~F.~~ Notice of vacancies. ~~Registrants~~ Applicants shall be furnished information relative to vacancies ~~in from one to three areas where they have requested information and for which they state they are qualified~~ received by the bureau but should apply only for those positions for which the applicant holds or is eligible to hold Minnesota licensure.

E. ~~C.~~ Providing credentials. The bureau shall make credentials of ~~a registrant~~ an applicant available to employing officials of school districts upon their request or upon the request of the ~~candidate~~ applicant.

F. ~~H.~~ Recommendation of ~~registrants~~ applicants. The bureau shall not recommend ~~registrants~~ applicants for positions but shall present papers of ~~registrants~~ applicants which are on file to employing officials.

G. ~~I.~~ Reciprocity. The bureau may establish reciprocal relations with members of the Association for School, College, and University Staffing, and other noncommercial teacher placement agencies in Minnesota and other states. Papers from other ~~a~~gencies will no longer be maintained in bureau files.

Repealer. EDU 462 is repealed.

Energy Agency
Data and Analysis Division

Proposed Rules Relating to Reducing Demand and Increasing Supply of Petroleum Products during an Energy Supply Emergency

Notice of Hearing

Notice is hereby given that public hearings on the proposed rules will be held pursuant to Minnesota Statutes, § 15.0412, subd. 4, at the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 137 Wilson Hall,
Itasca Community College,
1851 East Highway 169,
Grand Rapids, Minnesota;
August 18, 1981; 2:00 P.M. and 7:00 P.M.

Emergency Operations Center Room,
Law Enforcement Center,
710 South Front Street,
Mankato, Minnesota;
August 20, 1981; 1:00 P.M. and 7:00 P.M.

Large Hearing Room,
7th Floor American Center Building,
150 East Kellogg Boulevard,
Saint Paul, Minnesota;
August 24, 1981; 9:30 A.M. and 7:00 P.M.

All interested or affected persons will have the opportunity to participate. Oral or written data, statements or arguments may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 (612) 296-8104. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

A copy of the proposed rules is attached to this notice or is published on the pages following this notice in the *State Register*. One free copy of this notice and the proposed rules may be obtained by contacting David Miller at the Minnesota Energy Agency, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-7043. Additional copies will be available at the door on the dates of the hearings.

The proposed rules set out the procedures and measures the state will use to deal with an energy supply emergency resulting from a shortage of petroleum products, including fuel oils and motor fuels. The rules include many measures which will be

available for reducing demand and increasing supply during energy emergency. The rules also set forth the state operating organization for energy emergencies and provide an appeals process for persons aggrieved by actions taken. Priority uses of petroleum products are established.

The agency is authorized to adopt the proposed rules by Minn. Stat. § 116H.08a (1980) and, primarily, Minn. Stat. § 116H.09 (1981).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Baard within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the hearing examiner.

Rules as Proposed (all new material)

6 MCAR § 2.3101 Authority. These rules are authorized by Minn. Stat. § 116H.09 (1980). These rules will also meet, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979, Section 102, 42 United States Code, Sections 8511 to 8541 (1979).

6 MCAR § 2.3102 Purpose. These rules identify measures that may be used in the event of a petroleum supply emergency. The further purposes of these rules are: to protect the health and safety of the citizens of the state by ensuring that certain priority petroleum users have sufficient fuel to conduct essential activities; to facilitate the distribution of supplies to the public in a fair manner; to identify and authorize the actions to be undertaken by governmental agencies in an energy supply emergency; to describe the responsibilities of major employers and school district authorities in petroleum supply emergency planning and implementation; to establish an appeals system and procedures for exemptions from and exceptions to emergency measures; and to authorize the State Executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR § 2.3103 Applicability of rules. These rules shall apply:

A. generally, during a declared Energy Supply Emergency. (see 6 MCAR § 2.3106);

B. generally, during a declared Energy Supply Alert (see 6 MCAR § 2.3105);

C. to the Minnesota Energy Agency when the agency is preparing to recommend that an Energy Supply Alert or an Energy Supply Emergency be declared.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

6 MCAR § 2.3104 Definitions. For purposes of 6 MCAR §§ 2.3101-2.3121 the terms defined in this rule have the meanings given them:

A. "Agency" means the Minnesota Energy Agency;

B. "Agriculture" means activities of establishments primarily engaged in food production, processing and sale classified under the industry code numbers specified below as set forth in Standard Industrial Classification Manual, 1972 edition:

1. Major Group 01—Crops, except for industry code nos. 0132 tobacco, and 0181 ornamental floriculture and nursery products.

2. Major Group 02—Livestock, except for animal specialties, industry code nos. 0271, 0272, and 0279.

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

4. Major Group 09—Fishing, Hunting, and Trapping.

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

6. Group 514—Groceries and Related Products (all industry codes found thereunder).

7. Group 515—Farm Product Raw materials (all industry codes found thereunder).

8. Major Group 54—Food Stores.

C. "Assistant director" means the assistant director of the Minnesota Energy Agency who heads the Data and Analysis Division;

D. "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal level of operation. For determining baseline consumption any of the following methods shall constitute a representative period for the purpose of these rules:

1. the preceding 12 months, or

2. the most recent 3-year average, or

3. a 12-month "rolling base" where the most recent month's data is added and the thirteenth month's data deleted.

E. "Btu" means British thermal unit, a unit of energy measurement used for comparative purposes;

F. "Cargo, freight and mail hauling by truck, including newspaper deliveries" means: motor carriers for hire, licensed and operating under Minn. Stat. §§ 221.001 to 221.293; local cartage carriers, licensed and operating under Minn. Stat. § 221.296; interstate motor carriers, operating in Minnesota under Minn. Stat. §§ 221.61 to 221.68; mail hauling by any motor vehicle owned and operated by the U.S. Postal Service; and newspaper delivery by a motor vehicle identified as a newspaper carrier;

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

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

I. "Commercial vehicles" means vehicles registered and licensed in the commercial class with the Division of Driver and Vehicles Services of the Department of Public Safety, or vehicles which by their design, size or company identification or by the presence of specialized equipment, tools, or instruments of the trade or profession, or other evidence of commercial use are obviously being used for commercial purposes;

J. "Company-owned vehicles" means passenger automobiles, vans, and light trucks owned or leased by the employer;

K. "Consumer" means a person that consumes fuel oil, or motor fuel whether diesel fuel, gasoline, propane or alcohol;

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

M. "Demand" means the quantity of products or services for which there are willing and able purchasers;

N. "Director" means the Director of the Minnesota Energy Agency;

O. "Division" means the Division of Emergency Services of the Department of Public Safety;

P. "Division Director" means the Director of the Division of Emergency Services;

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

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

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

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

U. "Energy production" means transportation by pipeline, transmission line, rail, barge or motor carrier of energy or primary fuel and the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy;

V. "Environmental standards" means the laws and regulations, both federal and state, intended to protect the environment;

W. "Essential government services" means court and judicial activities, jails and prisons, meetings of duly elected policital officials, operations of the Division of Emergency Services and the Emergency Operating Center, hearings of Local Energy Conservation Boards and the Office of Administrative Hearings, minimum services to provide AFDC, SSI and Social Security checks and other welfare payments including food stamps, and activities which provide life-sustaining services;

X. "Extracurricular Activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school;

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

Z. "Forecast" means a projection of future demand or supply for a specified time period;

AA. "Fuel oil" means a liquid or liquefiable petroleum product with a flashpoint above 100°F which is used to generate heat or power including middle distillate oil or residual oil;

BB. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped;

CC. "Highways" means Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 (1980), and the Federal Aid Highways Act of 1956;

DD. "Home owner" means a person who has a vested legal or beneficial interest, jointly or severally, in a dwelling which is occupied by that person;

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

FF. "Licensed motor vehicle dealer" means a motor vehicle seller or lessor licensed to do business under Minn. Stat. § 168.27, Subds. 2 to 25 (1980);

GG. "Middle distillate" means a derivative of petroleum, including kerosene, home heating oil, range oil, stove oil, and diesel fuel, which has a fifty percent boiling point in the ASTM D86 standard distillation test falling between 370° and 700°F,

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except that kerosene-base and naphtha-base jet fuel, heavy fuel oils as defined in VV-F-815C of ASTM D-396, grades #4, 5, and 6, intermediate fuel oils (which are blends containing #6 oil), and specialty items such as solvents, lubricants, waxes, and process oil are excluded;

HH. "Military uses" means the activities of the armed forces of the United States and of the Minnesota Department of Military Affairs, the Office of Adjutant General, military reservations, installations, armories, air bases, and facilities owned or controlled by the state for military purposes and includes the national guard, the state guard, and any other organization or components of the organized militia authorized by Minn. Stat. Chs. 190 to 193 (1980), known as the Military Code;

II. "Moped" means a pedal bicycle or similar two-wheel vehicle propelled by a motor;

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

KK. "Motor fuel" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine;

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

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

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

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

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

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

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

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

TT. "Residual fuel oil" means the fuel oil commonly known as: No. 4, No. 5 and No. 6 fuel oils; Bunker C; Navy Special Fuel Oil; and all other fuel oils which have a fifty percent boiling point over 700°F in the ASTM D-86 standard distillation test;

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

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

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

XX. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state to meet emergencies and hardship needs under Minn. Stat. § 116H.095 (1981);

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

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

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

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

CCC. "Vanpool" means eight or more persons commuting on a daily basis to and from work in a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers; and

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

6 MCAR § 2.3105 Energy supply alert. An energy supply alert shall be declared to inform Minnesota citizens of a potential energy shortage, encourage conservation, and initiate a state of readiness for the shortage.

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

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

6 MCAR § 2.3106 Energy supply emergency. An energy supply emergency is a state of declared emergency resulting from a shortage of energy resources, including petroleum products, natural gas, or electricity.

A. Minnesota Energy Agency. When the agency's forecast shows that short-term demand for a fuel or fuels exceeds the forecast of short-term supply and that a supply shortage will occur within three months, the director may recommend that an energy supply emergency be declared.

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Minn. Stat. § 116H.09, subd. 5 (1980).

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

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the Division, the Agency and the Secretary of State.

6 MCAR § 2.3107 Operating organization during an emergency.

A. Energy emergency operating center. During a declared energy supply emergency, the Division will set up an energy operating center.

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

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

B. Minnesota Energy Agency.

1. The agency shall assist the division by analyzing the energy supply situation, evaluating alternative courses of action included in the emergency plan, and advising on the proper time and sequence for implementing emergency measures.

2. The agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR § 2.3114 A. to C., 6 MCAR § 2.3120 A. to H. and § 2.3121 A. to D. capable of eliminating a fuel shortage.

3. The assistant director of the agency shall review employer and school district conservation plans and certify those which meet the requirements set out in 6 MCAR § 2.3120 B. or C.

4. The director shall make the final decision on each appeal taken from measures contained in these rules.

C. Emergency services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

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

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

D. The Governor may order any state agency or department to carry out the measures contained in these rules under the powers given the Governor in the Minnesota Civil Defense Act, Minn. Stat. Ch. 12.

6 MCAR § 2.3108 Local energy conservation board.

A. Each county and each city of the first class shall create a local energy conservation board to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3114 A. and B., 2.3120 A. to H., except B. and C., and 2.3121 A. to E.

1. The Governor may order the creation of additional local energy conservation boards be established upon the agency's determination that additional boards are necessary to insure compliance with the timing provisions in 6 MCAR § 2.3109 C.

2. The appointment of additional local energy conservation boards and their conduct shall be governed by the procedures set forth in 6 MCAR §§ 2.3108 B. and 2.3109.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county local energy conservation board which includes two elected officials from the county or municipalities within the county, a health professional, the county fuel coordinator and a member of the public. If the chair of the county commissioners is unable to fill the local conservation board from this list, additional members shall be selected from the public. The county attorney shall advise the local energy conservation board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal local energy conservation board which includes two elected city officials, the city fuel coordinator, a health professional, and a member of the public. If the chair of the city council is unable to fill the local conservation board from this list, additional members shall be selected from the public. The city attorney shall advise the local energy conservation board.

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

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

6 MCAR § 2.3109 Appeals.

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

1. An appeal of mandatory measures, except those described in 6 MCAR §§ 2.3114 C. and 2.3120 B. and C., shall be heard by the local energy conservation board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate.

2. An appeal from a decision not to certify an employer or school district conservation plan and an appeal from an order to implement an employer or school plan shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

3. An appeal of an order to curtail delivery of fuel oil, 6 MCAR § 2.3114 C., and an appeal of priority status shall be heard by a hearing examiner appointed by the chief hearing examiner and shall be directed to the State Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

4. An appeal from the petroleum supply emergency conservation rules shall be decided by the director and shall be directed to the Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

B. Content of appeal.

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

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

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

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

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

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

2. The appeal of a decision not to certify an employer or school district conservation plan or of an order to implement all or any part of an approved conservation plan shall include a description of the existing or proposed conservation programs through which the employer or school district claims compliance with 6 MCAR § 2.3120 B. or C. In the case of an appeal from a decision not to approve 6 MCAR § 2.3120 B.9.a. employer plans (submitted after an energy supply emergency is declared), the appeal shall also contain documentation of the methodology on which the claim of motor fuel savings or program performance is based and a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three working days after receipt of an appeal, the local conservation board or hearing examiner, whichever is appropriate, shall set a hearing date. The hearing shall be held as soon as practicable but not later than seven working days after receipt of the appeal, unless appellant requests a later hearing date. The chair of the local conservation board (or designate), or the hearing examiner, shall notify all known affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than two working days before the hearing. An appeal shall be considered received when it has arrived at the appropriate location designated in 6 MCAR § 2.3109 A. A local energy conservation board may convene at any location within its jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. The "Rules of Procedure for Contested Cases" found at 9 MCAR §§ 2.201-2.222 shall govern the conduct of the appeals.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a decision not to certify an employer or school district conservation plan shall name the Assistant Director as a party to the appeal.

4. A party may be represented by counsel.

5. An appellant subject to provisions of these rules must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision shall be made under 6 MCAR § 2.3109 E.

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

7. Failure of an appellant to appear after timely notice is sufficient cause for denial of an appeal.

8. The failure of the emergency operating center to appear at a hearing of a local energy conservation board on an appeal from an emergency measure shall not constitute a default or bar the director from reversing the board's decision so long as the director complies with the timing provisions in 6 MCAR § 2.3109 E. 3.

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

10. Appeals shall not be heard if received more than ten working days after the termination or expiration of the Energy Supply Emergency.

D. Hearings.

1. An appellant has a right to a hearing before the local energy conservation board, or the hearing examiner, whichever is appropriate. See 6 MCAR § 2.3108 A. At the hearing the parties may present and cross-examine witnesses, and present written evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal.

2. The local energy conservation board or the hearing examiner shall prepare an official record of each hearing. A party requesting a verbatim transcript of the hearing may bear the expense of preparing the transcript.

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

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal, except that official notice may be taken of pertinent fact.

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

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

4. The appellant may seek judicial review of a final decision of the director in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 to .052 (1980).

6 MCAR § 2.3110 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1980).

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

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

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

6 MCAR § 2.3111 Priority uses of fuel oil.

A. Purpose. The priority ranking set out below, and the allocation and conservation measures contained in 6 MCAR 2.3114 A. to C., are intended to reduce the demand for petroleum products used for heating and power generation and ensure that the necessary fuel requirements of higher priority consumers are met before the lower priority consumers.

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

1. First priority fuel oil uses are:

   a. Health and residential care services;

   b. Residential heating;

   c. Passenger transportation;

   d. Plant protection;

   e. Emergency vehicles;

   f. Telecommunications;

   g. Energy production;

   h. Agriculture;

   i. Sanitation services; and

   j. Essential government services.

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

   a. Cargo and freight hauling, except for the first priority uses as defined in 6 MCAR § 2.3111 B.1.

b. Personal motor transportation. Diesel powered automobiles shall be subject to all the provisions of the motor fuel measures described in 6 MCAR § 2.3111.

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

a. Schools and religious institutions;

b. Government, except those services listed in 6 MCAR § 2.3111 B.1.;

c. Commerce, except those services listed in 6 MCAR § 2.3111 B.1.;

d. Industry, except those services listed in 6 MCAR § 2.3111 B.1.

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

5. Fuel oil users may apply for state set-aside product if fuel oil becomes otherwise unobtainable, according to state set-aside application procedures under 6 MCAR §§ 2.0101 to 2.0107. Preference shall be given higher priority consumers over lower priority consumers in the assignment of state set-aside product.

6 MCAR § 2.3112 Priority uses of motor fuel.

A. Purpose. The priority ranking set out below and the supply management and conservation measures contained in 6 MCAR §§ 2.3120 A. to H. and 2.3121 A. to E. are intended to reduce the demand for motor fuels and ensure that the necessary fuel requirements of first priority consumers are met before lower priority consumers.

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

1. First priority motor fuel uses are:

a. Military uses;

b. Emergency vehicles;

c. Energy production;

d. Sanitation services;

e. Telecommunications;

f. Agriculture;

g. Passenger transportation;

h. Cargo, freight, and mail hauling by truck, including newspaper deliveries; and

i. Aviation ground support vehicles.

2. Exemptions granted in 6 MCAR §§ 2.3120 A. to H., and 2.3121 A. to D., are based on the above list of first priority uses.

3. First priority consumers may apply for state set-aside product as provided under Minn. Stat. § 116H.095 (1981), if fuel supplies become otherwise unavailable. Applications for state set-aside shall be made according to set-aside application procedures under 6 MCAR §§ 2.0101 to 2.0107. Preference shall be given first priority motor fuel consumers in assignment of state set-aside product.

4. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of a vehicle's exemption status will constitute a violation of these rules and subject the user to the penalties described in 6 MCAR § 2.3110.

6 MCAR § 2.3113 Severe shortage. If the director determines that the supply shortfall of petroleum and petroleum products is so severe that the existing production and distribution system is incapable of providing adequate supplies to all first priority

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consumers of motor fuel or diesel fuel, then the director shall advise the Governor that deliveries to otherwise priority consumers be curtailed, so that higher priority consumers will be provided the necessary fuel to continue essential operations. The Governor may order the curtailment of priority consumers when in the Governor's judgment, the available supply best serves to preserve the health and safety of the citizens of the state when put to a higher priority use.

6 MCAR § 2.3114 Fuel oil emergency measures. Upon declaration of an energy supply emergency for petroleum, the Governor shall select from the following measures to reduce the shortage of fuel oil.

A. Voluntary measures:

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

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

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

4. Commercial and industrial users shall be requested to release fuel oil from inventory supplies.

a. The Fuel Allocation Rules of Procedure (6 MCAR §§ 2.0101-2.0107) will be used to allocate voluntarily released inventory.

b. Suppliers shall be directed to deliver fuel oil supplies consisting of voluntary releases according to the system of priorities described in 6 MCAR § 2.3111 B.

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

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

B. Mandatory measures.

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

2. Smoking within buildings shall be prohibited and reduction of the amount of outside air entering the building ventilation systems may be ordered.

3. Electric utilities with oil-fired generating facilities which are members of the Mid-Continent Area Power Pool shall be ordered to use oil of a quality not suitable for home heating or to shut down these plants and purchase power from the pool when power from non-petroleum-fired generating facilities is available from the pool.

4. Fuel oil suppliers shall be ordered to stop deliveries to large users (1000 gallon or larger storage tanks) until those users have less than one week's fuel oil supply on hand.

5. Business, industrial and government institutions which now burn middle distillate, natural gas, or propane and which have the capacity to burn residual oil shall be ordered to convert to residual oil during the emergency, unless such action is specifically prohibited by other law or rule of the Pollution Control Agency or other agency.

C. When the agency determines that actions listed in 6 MCAR § 2.3114 A. and B. have not been or will not be sufficient to eliminate the shortage the following measures may be selected by the Governor:

1. Owners/operators of commercial, industrial, and government buildings shall be ordered to reduce heating thermostats to 62°F during the day where such action does not violate Minnesota Rule MOSHC 41f., and 50°F at night or during unoccupied periods.

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

3. Delivery of fuel oil supplies to specific industries, including commerce and government, shall be ordered to be curtailed according to the following criteria. A curtailment order shall be in writing signed by the Division Director, and shall be delivered by registered mail to firms in the industry and area suppliers.

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

b. First priority uses under 6 MCAR § 2.3111 B. will be the last to be curtailed. Second priority uses will be curtailed after third priority uses.

c. A firm may be exempted from curtailment of fuel oil deliveries if it can demonstrate it has reached the 1980 energy conservation targets established by the Department of Energy in 1977, under the Energy Policy and Conservation Act of 1975, if applicable, and that its energy-labor ratio is below the industry average. If no energy conservation targets exist, the firm must prove that its energy-labor ratio is significantly below the industry average because of conservation or conversion efforts. Exceptions may be granted on appeal pursuant to 6 MCAR § 2.3109.

d. A firm's energy-labor ratio shall be determined by dividing the consumption of natural gas and fuel oil per employee by the ratio of its local degree days to the statewide average degree days of 8400. The 30-year average of degree days shall be used.

e. The order of curtailment and energy-labor ratios for industry grouping and associated S.I.C. codes will be compiled by the agency and published biennially in the *State Register* during the month of October.

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

5. Actions available for implementation under 6 MCAR § 2.3114 A. and B. will remain available under 6 MCAR § 2.3114 C.

6 MCAR § 2.3120 Motor fuel emergency measures. Upon declaration of an Energy Supply Emergency based upon a petroleum shortage, the Governor shall select from the following measures to reduce a motor fuel shortage.

A. Public information measure.

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

2. Measure requirements.

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

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Agency estimates of the shortfall of supplies expected for Minnesota;

(3) Agency estimates of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

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

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

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

B. Employer-based motor fuel conservation measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to reduce employee commuting and business-related motor fuel consumption in an energy supply emergency.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

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(2) All educational institutions at the post-secondary school level with a total combined student-facility commuting population of 200 or more persons, including colleges, universities, and vocational schools.

(3) State, county, and municipal governments who have employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any other conservation activity which reduces employee commuting and business-related motor fuel consumption.

c. Technical assistance in the preparation of emergency motor fuel conservation plans will be provided by the agency upon request.

3. Employer plans may be submitted to the agency for each applicable site or in conjunction with a business consortium, community, local, municipal or county-wide plan, so long as each employer subject to this rule identifies the conservation strategies adopted for each work site and the program elements listed under 6 MCAR § 2.3120 B. 7.

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

5. Employer emergency motor fuel conservation plan.

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

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

c. Employers submitting self-styled emergency motor fuel conservation plans shall include:

(1) a calculation of their baseline consumption as defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategies, and

(3) the plan elements described in 6 MCAR § 2.3120 B. 7.

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

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

6. Employer motor fuel reduction strategies.

a. Employers shall select at least four strategies from the Categories I and II, but in no case less than one from Category I.

b. Category I Strategies:

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

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

(3) Provide an auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide the service. A qualifying auxiliary transportation service shall consist of:

(a) vehicle(s) with a minimum carrying capacity of 20 passengers,

(b) a participation rate equal to 50 percent of employees who live within a three mile radius of the worksite, and

(c) at least one commuter check point at least five miles from the worksite.

Employer-sponsored rideshare programs which fulfill the requirements of 6 MCAR § 2.3120 B.6.b. will be certified

by the agency. Employers may issue "identifying" rideshare stickers to qualifying employees' vehicles. Rideshare vehicles will be eligible to purchase fuel as priority vehicles under the flag system described in 6 MCAR § 2.3120 F. and will be exempt from the odd-even purchase restriction described in 6 MCAR § 2.3120 D.

d. Category II strategies:

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

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

(3) Purchase an electric or electric-hybrid vehicle.

(4) Promote transit use by employees through direct sale of transit passes at the worksite, fare subsidies, or display of direct and connecting routes serving the worksite.

(5) Provide facilities which promote employee commuting by bicycle or moped. These facilities might include:

(a) indoor or sheltered bicycle parking,

(b) high security bicycle parking,

(c) showers and dressing areas for bikers.

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

(7) Institute flexible or staggered work hours.

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

7. An employer submitting an emergency motor fuel conservation plan according to 6 MCAR § 2.3120 B.5. or 6. shall identify in its plan the following:

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

b. Title of the person or persons responsible for supervising each plan component.

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

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

f. The schedule for implementing chosen strategies; and

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

8. Employers shall institute all strategies contained in an approved employer conservation plan when the Governor orders the employer-based motor fuel conservation measure.

9. Employers who do not have an approved emergency motor fuel conservation plan before the declaration of an Energy Supply Emergency for motor fuel shall:

a. Submit to the agency within fifteen days after declaration of an Energy Supply Emergency for motor fuel a plan to reduce baseline consumption by at least fifteen percent over a period of three months or longer, or

b. Institute a compressed work week pursuant to an Executive Order of the Governor that designates the weekday on which employers not qualifying under 6 MCAR § 2.3120 B.5., 6., or 9.a., shall not perform or have an employee perform any activity related to the business except where:

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

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

(c) Plant protection requires a minimum level of attention or surveillance.

c. The following businesses or governmental activities shall be exempt from a compressed work week regardless of 6 MCAR § 2.3120 B.9.:

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

(2) Agriculture;

(3) Energy production;

(4) Telecommunications; and

(5) Sanitation services.

C. School conservation measure.

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

2. Applicability.

a. Each school district, as defined in Minn. Stat. §§ 122.01 to 122.541 (1980), and nonpublic school, as defined in Minn. Stat. § 123.932, subd. 3 (1980), which has a combined student-staff population of 100 persons or more, is required to comply with this measure.

b. The boards of all school districts, defined and empowered under the Education Code, Minn. Stat. chs. 120 to 129 (1980), and non-public school authorities, shall be responsible for submitting plans under this rule.

3. School boards shall submit to the agency within 18 months after the effective date of these rules, or within 45 days after declaration of an energy supply emergency, whichever comes first, an emergency motor fuel conservation plan as defined in paragraphs six or seven of this rule.

4. Nonpublic schools may fulfill the requirements of this rule by submitting a plan to the agency in one of the following forms:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

c. A signed agreement with a school district which states the nonpublic school's strategies and the person or position responsible for implementation of strategies adopted by the private school.

5. School districts or nonpublic school associations shall submit either a self-styled conservation plan as provided in paragraph 6 of this rule or a plan structured from the strategies provided in paragraph 7.

6. School emergency conservation plan: Option A.

a. School districts may submit a self-styled conservation plan including any conservation strategies that taken together would reduce baseline consumption by at least 15 percent during an energy supply emergency.

b. Self-styled conservation plans shall include:

(1) a calculation of the baseline consumption, defined in 6 MCAR § 2.3104 D.,

(2) the expected motor fuel savings attributed to each selected strategy, and

(3) the plan elements described in 6 MCAR § 2.3120 C.8.

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

d. The assistant director may decline to certify a school district or association plan submitted under this rule which fails to empirically support the savings attributable to each of the proposed actions. Self-styled school plans may include any of the strategies provided in paragraph 7. of this rule.

7. School emergency conservation plan: Option B reduction strategies.

a. School districts shall select at least three strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies. School districts shall implement Category I strategies upon the selection of this measure by the Governor in an energy supply emergency.

(1) Prohibit student parking on school grounds and request local authorities to pass or enforce parking restrictions in areas adjacent to a school for the duration of the emergency. Exemptions from the parking prohibition may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation, or

(d) are members of a carpool registered with the school rideshare coordinator.

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

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

c. Category II strategies. School Districts choosing Category II strategies (1), (2), (3), and (6) shall implement these strategies prior to or within 3 months after submitting their conservation plans to the agency.

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

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

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

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

(5) Cancel or reschedule some extracurricular activities. Selection of this strategy is not permitted if Category I—strategy (2) has been chosen and applies when the Governor orders the school conservation measure.

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

8. Emergency motor fuel conservation plans submitted by school districts shall include:

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

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

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

9. School districts shall implement all or part of their plans as specified by the division director upon order of the Governor.

D. Odd-even purchase requirement measure.

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

2. Applicability.

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

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

c. The restrictions in this rule shall not apply on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following vehicles shall be exempt from the odd-even purchase requirement. Motor fuel may be purchased for them on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112. For the odd-even purchase requirement, vanpools will be those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency, vanpool services agency, or employer, or carrying at least eight passengers on a work commuting trip.

b. Ridesharing vehicles identified by employers with state certified conservation plans, as described in 6 MCAR § 3.2120 B.6.b.

c. Vehicles being used for commercial purposes, as defined in 6 MCAR § 2.3104 I.

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

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

f. Motorcycles and mopeds.

g. Vehicles not licensed for highway use.

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

i. Vehicles being operated by individuals under emergency circumstances which in the judgment of the ratailer demand an exception.

E. Minimum purchase requirement measure.

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

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted by a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least five gallons.

b. In the event the quantity purchased is less than the five gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction price is equal to the stated pump price times the five gallon minimum.

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

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

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

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

a. Vehicles being driven for first priority uses, as defined in 6 MCAR § 2.3112. For the minimum purchase requirement, vanpools are those vehicles either displaying a "vanpool" designation issued by a vanpool leasing agency or vanpool services agency, or carrying at least eight passengers on a work commuting trip.

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

c. Out-of-state licensed vehicles.

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

F. Flag requirement for motor fuel retailers.

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

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. The flag should be clearly visible from at least 100 yards in each direction of the station.

a. A green flag indicates that motor fuel is available to the public subject to the purchase restrictions imposed by these

rules. A station flying a green flag cannot show preference to any customer, except that emergency vehicles may be allowed to move to the front of an existing line to be fueled.

b. A yellow flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3112, and to ridesharing vehicles which have been identified by employers according to the terms and provisions of a state-certified conservation plan, as described in 6 MCAR § 2.3120 B.

c. A red flag indicates a station is out of fuel and/or is closed. No motor fuel may be dispensed from a station flying a red flag, except to emergency vehicles, as defined in 6 MCAR § 2.3104 R.

G. Motor fuel availability measure.

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

2. Motor fuel retailers who have historically remained open 24 hours a day and provided emergency road service may apply for state set-aside product assignment according to the state set-aside application procedures authorized by Minn. Stat. § 116H.095 and 6 MCAR §§ 2.0101 to 2.0107.

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

H. Strict enforcement of posted highway speed limits.

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

2. Motorists shall strictly obey the maximum legal speed limit. Violations of the maximum legal speed limit during a declared energy supply emergency shall be subject to the additional penalities provided in 6 MCAR § 2.3110.

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

6 MCAR § 2.3121 Severe motor fuel emergency measures. When the agency determines that the measures listed in 6 MCAR § 2.3120 A. to H., have not eliminated or will not eliminate the shortage of motor fuel, the Governor may order any of the following measures.

A. Vehicle permit-sticker measure.

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

2. Applicability.

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

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

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

3. Exemptions.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3112;

b. Vehicles held for sale or lease by a licensed motor vehicle dealer in the ordinary course of business;

c. Motorcycle and mopeds;

d. Short-term rental vehicles; and

e. Such other vehicles as the Governor may determine.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

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

6. The Governor may waive the requirement for the display of exempt permit-stickers for any vehicle class listed under paragraph three (3).

B. Recreational vehicle ban measure—Type I.

1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands for limited periods during an energy supply emergency.

2. Measure requirements for a Type I recreational vehicle ban.

a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the DDVS, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy emergency. A Type I ban may, however, be renewed for the maximum 15-day period for each 30-day period the energy supply emergency remains in effect.

b. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, explaining the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

c. Exceptions. Parties may apply to the local energy conservation board for an exception to this measure. Upon a determination by the board that the applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt-sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, an exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.109 E.3.

C. Recreational vehicle ban measure—Type II.

1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters subject to the state's proprietary interest, shall be prohibited for a period not to exceed 15 days during any 30-day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum 15 day period for each 30-day period an energy supply emergency remains in effect.

2. The division director shall issue a statement to news media at least seven days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The division director's statement is to receive widest possible distribution to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the local energy conservation board. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3109. Upon a determination by the board that an applicant should be granted an exception to the ban, the board shall recommend to the division director that an exempt sticker be issued to the applicant. The division director, or designate, shall deliver to the applicant within three days after receipt of the local conservation board's favorable recommendation, and exempt sticker which must be displayed for the duration of the ban. The division director, or designate, shall not deliver an exempt sticker to the applicant, if the director serves notice of his/her intent to reverse the recommendation of the local energy conservation board as provided in 6 MCAR § 2.3109 E.3.

D. Speed limit reduction measure.

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

2. The Governor upon the advice of the agency shall order the Commissioner of Transportation to set a lower speed limit

on all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to Minn. Stat. § 169.141 (1980).

3. Violation of the maximum limit during an energy supply emergency for motor fuel shall carry the additional penalties as provided in 6 MCAR § 2.3110.

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

E. Driving ban measure.

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

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

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

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

a. Emergency vehicles;

b. Sanitation services vehicles;

c. Aviation ground support vehicles;

d. Vehicles identified as required in 6 MCAR § 2.3120 B.7.g. and used by employees in commuting for the purposes of plant protection.

e. Vehicles used in providing or transporting employees for emergency medical care, residential care, telecommunications services, energy production, and news reporting;

f. Individuals who require daily medical treatment; and

g. Out-of-state licensed vehicles.

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

6. The agency will issue guidelines for identification of exempt vehicles prior to a driving ban.

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of all the evidence and argument which the board anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the board (in the case of the board's submission or resubmission to the Attorney General).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses, and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

Rochelle Barnhart
Vice-Chairman

Rule as Proposed

4 MCAR § 4.100 Certain ownership prohibited. None of the following shall directly or indirectly own, operate, control or have a legal or equitable interest in a cable communications system:

D. A telephone company within its local exchange area, unless a proper and timely waiver is obtained from the Federal Communications Commission~~;~~ ~~or.~~

~~E. A publisher and/or owner of a newspaper company and the newspaper company within the primary market area, as defined by the Audit Bureau of Circulation, served by the newspaper; or~~

~~F. A radio or television broadcast station, broadcasting from within the Twin Cities metropolitan area as designated in Minn. Stat. § 473.121, subd. 4.~~

Energy Agency
Data and Analysis Division

Proposed Rules Relating to Reducing Demand and Increasing Supply of Petroleum Products During an Energy Supply Emergency

Notice of Postponement and Rescheduling of Hearings

Notice is hereby given that the public hearings on the above encaptioned proposed rules which were originally noticed in 5 S.R. 2110 (*State Register*, Monday, June 29, 1981) and scheduled to be held on August 18, 1981, in Grand Rapids, Minnesota, August 20, 1981, in Mankato, Minnesota, and August 24, 1981, in St. Paul, Minnesota, have been postponed and rescheduled. The hearings have been rescheduled and relocated to the following locations on the dates indicated, commencing at the times listed and continuing until all persons representing themselves or associations or other interested groups have had an opportunity to be heard concerning the adoption of the proposed rules.

Room 202 Mullins Hall, Itasca Community College, 1851 East Highway 169, Grand Rapids, Minnesota. September 29, 1981; 2:00 p.m. and 7:00 p.m.

Emergency Operations Center Room, Law Enforcement Center, 710 South Front Street, Mankato, Minnesota; October 1, 1981; 1:00 p.m. and 7:00 p.m.

Room G-15, State Capitol Building, St. Paul, Minnesota; October 5, 1981; 9:30 a.m. and 7:00 p.m.

MEA Exh 13

All interested or affected persons will have the opportunity to participate. Oral or written data, statements or arguments may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Allan W. Klein, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104 (612) 296-8104. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process.

A copy of the rules was previously mailed to all persons on the agency's mailing list and was published at 5 S.R. 2111 (*State Register*, Monday, June 29, 1981) and is hereby incorporated by reference. One free copy of this notice and the proposed rules may be obtained by contacting David Miller at the Minnesota Energy Agency, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101, telephone (612) 296-7043. Additional copies will be available at the door on the dates of the hearings.

The proposed rules set out the procedures and measures the state will use to deal with an energy supply emergency resulting from a shortage of petroleum products, including fuel oils and motor fuels. The rules include many measures which will be available for reducing demand and increasing supply during energy emergency. The rules also set forth the state operating organization for energy emergencies and provide an appeals process for persons aggrieved by actions taken. Priority uses of petroleum products are established.

The agency is authorized to adopt the proposed rules by Minn. Stat. § 116H.08a (1980) and, primarily, Minn. Stat. § 116H.09 (1981).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the hearing examiner.

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EA-81-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Procedures and Measures to be Used to Reduce Demand and Increase Supply of Petroleum Products During an Energy Supply Emergency, 6 MCAR §§ 2.3101 through 2.3121.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule, with the following comments:

Finding 27

While the Chief Hearing Examiner agrees with the Hearing Examiner's finding, the agency is cautioned that, depending on what the definition of "essential transportation services" contains, it could be a substantial change. However, that determination can only be made after the agency decides which method of curing this defect will be utilized. Likewise, no comment is made at this time on whether the second option, adding private carriers to the definition, would result in a substantial change. That decision must wait until the agency submits the rules to the Chief Hearing Examiner after making its changes.

Finding 29

By finding that the proposed rule grants discretion to the agency which is too broad, the Examiner has concluded that the rule fails to "make specific" the law implemented by the rule, as required by law, as well as finding that the reasonableness of the rule has not been established (see, Conclusion No. 4). However, since the Examiner has made a conclusion solely on the reasonableness of the rule, the agency has the option of seeking review by the LCRAR. These comments are only to point out that there is another problem with the rule as drafted should the agency choose to cure the defect as recommended by the Examiner.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: November 30, 1981.

DUANE R. HARVES
Chief Hearing Examiner

EA-81-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Procedures and Measures to be Used to Reduce Demand and Increase Supply of Petroleum Products During an Energy Supply Emergency, 6 MCAR §§ 2.3101 through 2.3121.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Phyllis A. Reha on September 29, 1981, at 1:00 p.m. at the Itasca Community College, Grand Rapids, Minnesota. The hearing continued on October 1, 1981, at 1:00 p.m. at the Law Enforcement Center, Mankato, Minnesota, and on October 5, 1981, at 9:30 a.m. at the State Capitol Building, Saint Paul, Minnesota.

This is a rulemaking proceeding conducted pursuant to the Administrative Procedure Act, Minn. Stat. § 15.0411, et seq. to determine whether rules proposed to reduce demand and increase supply of petroleum during an energy supply emergency should be adopted by the Minnesota Energy Agency (Agency).

The Agency was represented by Dwight S. Wagenius, Special Assistant Attorney General, 720 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101. Also appearing on behalf of the Agency were Richard Wallen, Assistant Director, Abigail McKenzie, Petroleum Analyst, and David Miller, Emergency Rules Analyst.

The hearing register was signed by 203 persons. Thirty-four members of the public spoke at the hearing. All persons desiring to testify were given an opportunity to do so. The record remained open through October 26, 1981, for the submission of written comments. Thirty-six timely written comments were received from the public prior to the close of the record. In addition, the Agency submitted post-hearing written comments.

The Director must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Director of actions which will correct the defects and the Director may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Director may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Director does not elect to adopt the recommendations, he may submit the proposed rule to the

Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Director elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Director shall submit the rule to the Attorney General for review of form and legality. If the Director makes changes in the rule other than those recommended by the Hearing Examiner, then he shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Director submits the rule to the Attorney General, he shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 5, 1979, the Agency published a Notice of Intent to Solicit Outside Information concerning the development of energy rules which could be implemented during a fuel oil shortage at 4 State Register 741.

2. On February 11, 1980, the Agency published a Notice of Intent to Solicit Outside Opinion concerning the development of a state emergency plan relating to gasoline conservation.

3. On March 24, 1980, the Agency published a Notice of Intent to hold public meetings on emergency gasoline conservation and allocation measures.

4. On September 15, 1980, the Agency published a Notice of Intent to Solicit Outside Opinion concerning draft rules revising the plan governing actions on procedures during a fuel oil supply emergency.

5. On March 9, 1981, the Agency published a Notice of Intent to Solicit Outside Opinion regarding rules governing the Minnesota emergency motor fuel conservation plan.

6. On June 15, 1981, the Agency filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing.
(c) The Notice of Hearing.
(d) A Statement of the number of persons expected to attend the hearing and estimate of the time required for the Agency's presentation.

7. On June 25, 1981, the Agency mailed the Notice of Hearing and proposed rules to all persons, associations and other interested groups who had registered their names with the Agency for the purpose of receiving such notice of the proposed adoption of rules by the Agency.

8. On June 29, 1981, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 2110.

9. On July 23, 1981, the Agency filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The certification that the Agency mailed copies of the proposed rules to all persons on the Agency's official State Register mailing list.
(c) The Statement of Need and Reasonableness.
(d) A copy of the State Register containing the proposed rules.
(e) Written public comments received by the Agency on both fuel oil and motor fuel draft rules.

10. The Hearing Examiner reviewed the documents submitted by the Agency and found that the Notice of Hearing mailed on June 25, 1981, was defective. The following information required by 9 MCAR § 2.102 C. was not included in the Notice:

(a) A statement advising persons of the statutory definition of a lobbyist and lobbyist registration requirements (9 MCAR § 2.102 C.6.).
(b) A separate paragraph stating that any person has the right to request notification of the date on which the Hearing Examiner's Report will be available and the date on which the hearing record has been submitted to the Attorney General by the Agency (9 MCAR § 2.102 C.7.).
(c) A separate paragraph indicating the availability of the Statement of Need and Reasonableness at the Agency or at the Office of Administrative Hearings 25 days before the hearing (9 MCAR § 2.102 C.9.).
(d) A statement informing persons of the rules and statutes governing the rule hearing procedure and a statement that questions about procedure may be directed to the Hearing Examiner (9 MCAR § 2.102 C.11.).

11. The Hearing Examiner determined that the Agency could correct these procedural defects by:

(a) Mailing a new Notice that contained the information required by 9 MCAR § 2.110 C., and
(b) Moving the hearing dates forward so the corrected Notice was available to the public 30 days before the hearing as required by Minn. Stat. § 15.042, subd. 4(b) (1980).

12. On July 31, 1981, the Agency filed with the Hearing Examiner a copy of the new Notice entitled, "Notice of Postponement and Rescheduling of Hearings". The public hearings originally scheduled to be held on August 18, 1981, in Grand Rapids, Minnesota, on August 20, 1981, in Mankato, Minnesota, and on August 24, 1981, in Saint Paul, Minnesota, were postponed and rescheduled for September 29, October 1, and October 5, 1981, respectively.

13. On August 6, 1981, the Agency requested approval from the Revisor of Statutes to incorporate certain documents by reference in its proposed rules.

14. On August 11, 1981, the Agency filed the following documents with the Hearing Examiner:

(a) The Agency's certification that its mailing list was accurate and complete as of August 10, 1981.
(b) The Affidavit of Mailing.
(c) A page inserted in the Statement of Need and Reasonableness after page 96.

15. On August 17, 1981, a Notice of Postponement and Rescheduling of Hearing was published at 6 State Register 186.

16. On August 20 and 28, 1981, in accordance with Minn. Stat. § 15.0412, subd. 2(a) (1980), after consultation with the Chief Hearing Examiner, the Revisor of Statutes approved the following documents for incorporation by reference:

(a) The Standard Industrial Classification Manual, 1972, prepared by the Office of Management and Budget of the Executive Office of the President.
(b) The American Society for Testing and Materials, Standard Methods for Distillation of Petroleum Products.
(c) American National Standard ANSI/ASTM D 396: Standard Specification for Fuel Oils.

After making minor technical changes, the Revisor of Statutes approved the form of the rules.

17. On September 16, 1981, the Agency filed with the Hearing Examiner proposed changes in the petroleum supply energy rules suggested by the Revisor of Statutes and the Agency.

18. On October 5, 1981, the Agency filed with the Hearing Examiner a document entitled, "Order Withdrawing Proposed Rule Provisions". The Order withdrew from consideration for adoption by the Agency the following proposed severe motor emergency measures:

(a) 6 MCAR § 2.3121 B. (Recreational Vehicle Ban Measure-Type I).
(b) 6 MCAR § 2.3121 C. (Recreational Vehicle Ban Measure-Type II).

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19. On October 26, 1981, the Agency filed the following documents with the Hearing Examiner:

(a) Agency comments.
(b) A copy of the rules showing proposed changes by the Agency and the Revisor of Statutes, including the proposed deletion of 6 MCAR § 2.3121 B. and C.

20. The proposed rules, the Agency's Statement of Need and Reasonableness and other documents relating to the rulemaking proceeding were available for inspection at the Office of Administrative Hearings from the date of filing to the date of hearing. Copies of the documents were also available to the public at the hearing.

21. At the Mankato evening session, on October 1, 1981, sufficient copies of the Statement of Need and Reasonableness were not available for all members of the public attending the hearing. Individuals desiring copies were asked to provide their names and addresses to the Agency representatives at the hearing. The following day copies of the materials were mailed to all those individuals who indicated a desire to receive them.

The Agency's failure to have an adequate number of copies on hand for all interested persons constitutes a technical non-compliance with 9 MCAR § 2.104. This non-compliance was cured by the Agency's mailing a copy of the Statement of Need and Reasonableness to the persons who so requested. The delayed availability of the Statement of Need and Reasonableness did not prejudice any member of the public as the hearing record was held open for 20 days following the close of the hearing which was 25 days following the Mankato session. Furthermore, the document was available for inspection at the Office of Administrative Hearings from the date it was filed to the date of hearing. The failure of the Agency to comply with the letter of 9 MCAR § 2.104 in this instance does not reflect bad faith and did not prejudice the rights of those intended to be protected in the course of this proceeding. See, City of Minneapolis v. Wurtele, 291 N.W.2d 286 (Minn. 1980).

Sufficient copies of the documents were available at all other hearing sessions.

22. In response to various solicitations for comments on the proposed rules, the Agency received over 100 written comments from concerned individuals, agencies, businesses, legislators, organizations and schools. All of these comments, along with the comments submitted during the hearing and within the 20-day comment period following the close of the hearing have been reviewed by the Hearing Examiner.

Statutory Authority

23. Federal laws require the states to prepare and adopt energy emergency plans. The Agency believes that the proposed rules will satisfy, in part, federal requirements set forth in the Emergency Energy Conservation Act of 1979. Although the Act remains in effect, its continued viability and impact upon the state is now in question.

In 1979, Congress enacted the Emergency Energy Conservation Act (42 U.S. Code, §§ 8501 through 8541) to provide the framework for coordinated national response to an energy emergency shortage. The Act authorizes the creation of a federal emergency conservation plan and directs states to develop emergency conservation plans and submit them to the Federal Department of Energy for approval. The Act further provides that if a state plan is approved by the Department of Energy, in the event of a national emergency declared by the President, the state can operate under its own plan rather than the mandatory federal plan.

In 1980, the Department of Energy developed the Federal Standby Emergency Energy Conservation Plan to comply with the mandate of the Emergency Energy Conservation Act of 1979. (45 Fed. Reg. 8462 (1980)). The plan provides for emergency reduction in public and private use of energy sources. One purpose of the federal plan is to serve as an example and provide guidance for states as they prepare their own plans.

The recent change in national leadership brought work on the federal plan to halt. The new administration takes the position that most plans to manage the demand and distribution of energy are unnecessary because an unregulated market will provide sufficient assurance of an orderly adjustment to any future energy supply interruption.

The administration is actively implementing this marketplace policy. On January 28, 1981, The President removed the federal price and allocation controls on United States crude oil and petroleum products. (44 Fed. Reg. 9909 (1981)). By notice contained in the Federal Register on February 23, 1981, the Secretary of Energy withdrew or revoked four of the standby emergency energy conservation plan measures. The remaining measures, which are interim rules, are presently being withdrawn by the public hearing process.

In view of the present national energy policy, the mandates of the Emergency Energy Conservation Act, while perhaps historically interesting and even useful to the states, may not be followed in the future. Therefore, although the Emergency Energy Conservation Act of 1979 is technically in effect until 1983, it is unclear whether the State of Minnesota will be required to comply with the mandates of the act and submit its emergency energy plan for Federal Department of Energy approval. Certainly, the trend of the present Administration is toward a laissez-faire policy regarding the development of state energy emergency plans.

24. The statutory authority to promulgate the proposed rules is contained in Minnesota Energy Act (Minn. Stat. Ch. 116H). The original version of the Act (1974) created the Minnesota Energy Agency and directed it to prepare an emergency conservation and allocation plan. The first plan was prepared and issued by the Agency in 1976. Revisions of the plan were made informally by the Agency until 1979, when the Legislature amended Chapter 116H, requiring the Agency to comply with Chapter 15 rulemaking procedures.

Since 1979, in compliance with the statutory mandate, the Agency circulated a number of energy conservation proposals for public comment and initated a rulemaking procedure for its proposed rules.

The specific statutory authority to adopt and promulgate the proposed rules is contained in Minn. Stat. §§ 116H.08(a) and 116H.09, subd. 1. Minn. Stat. 116H.08(a) provides that the Director may:

> Adopt rules pursuant to chapter 15 as necessary to carry out the purposes of sections 116H.01 to 116H.015 and when necessary for the purposes of section 116H.09, adopt temporary rules pursuant to section 15.0412, subd. 5.

Minn. Stat. § 116H.09, subd. 1, provides in part:

> . . . the director shall prepare and issue an emergency conservation and allocation plan . . . . Such plan shall provide a variety of strategies and stage conservation measures to reduce energy use and in the event of an energy supply emergency, shall establish guidelines and criteria for allocation of fuels to priority users.

The Hearing Examiner finds that the Agency has the statutory authority to promulgate the proposed rules.

Rule By Rule Analysis

25. The proposed rules received careful review before and after the hearing. For almost two years, the Agency carried on a continuous process of actively soliciting comments on its energy conservation proposals. The Agency incorporated many of the suggestions it received into the proposed rules and then resubmitted them for additional public comments. In support of the adoption of these rules, the Agency has prepared a detailed Statement of Need and Reasonableness. As a result of the Agency's conscientious efforts to develop a sound energy emergency plan, many initial defects have been corrected and the rules have attained a high level of refinement.

This Report will not discuss each rule and subsection. It will focus on those provisions that the Hearing Examiner or members of the public questioned on any of the following grounds:

a. That the rule is unneeded or unreasonable; or

b. That the rule needs an amendment; or

c. That the rule violates the State or Federal Constitution; or

d. That the Agency exceeded its delegated authority; or

e. That the Agency has not complied with Minn. Stat. Ch. 15 or the rules of the Office of Administrative Hearings.

Persons or groups who do not find their particular comments addressed in this Report should know that the Hearing Examiner has read and considered each and every suggestion. Except as specifically noted, the Hearing Examiner finds that the Agency's proposed rules have been shown to be both needed and reasonable.

26. Rule 2.3104 contains definitions. Paragraph B. defines "agriculture" as activities of establishments that are primarily engaged in the production, processing and sale of food. The definition contains a list of products that are considered to be agriculture for the purposes of the rules. Non-essential foods such as carbonated beverages and candy products are generally excluded from the list. Those establishments dealing with products on the list receive first priority for use of both fuel oil and motor fuel and qualify for preferences and exemptions under the rules.

James Dunn of the Minnesota Motor Transport Association, Abe Rosenthal of the Minnesota Transport Services Association and others expressed concern that the definition does not include the transportation of agricultural products. They pointed out that transporting agricultural products is an integral part of the whole process of protecting the food supply and suggested that the definition be clarified to reflect this fact.

In post-hearing comments, the Agency agreed with the suggestion and recommended that the definition of agriculture be amended to include the transportation of all products listed in the definition.

so amended p.2.

The Hearing Examiner finds that the definition of "agriculture" is rationally related to the state's interest in providing essential, nutritious food to the people of the state in the event of an energy shortage and is, therefore, both needed and reasonable. The Hearing Examiner further finds that the proposed change to include the transportation of these goods is necessary to the overall purpose of protecting the food supply system and is not "substantially different" according to the standards set forth in 9 MCAR § 2.111.

27. Paragraph F. of Rule 2.3104 groups cargo, freight, mail hauling and newspaper deliveries as a category of transportation energy users that would have first priority to motor fuel during a motor fuel shortage. The definition only includes transport by truck.

In post-hearing comments, the Agency indicated that it did not intend to have other modes of transportation excluded from this priority ranking and proposed that rail, barge and ship transportation of cargo or freight be added to the definition. The Agency stated that the purpose of the definition is to ensure that the shipment of products receives priority status during a motor fuel shortage because the flow of goods is vital to the continued functioning of the economy. The Agency futher stated that the proposed change to include other modes of transportation is consistent with that purpose.

The Hearing Examiner agrees with the Agency that a carrier stoppage due to lack of motor fuel would have a deleterious effect on the state's economy and measures should be taken to avoid such an event. Industries would be forced to close and employees would be laid off. In addition, the definition includes both intrastate and interstate carriers. If these carriers are not given priority status during an energy shortage in Minnesota, the resultant disruption in the flow of goods could be sufficient justification for striking down the rule as an unconstitutional burden on interstate commerce. Therefore, the Hearing Examiner finds the definition and the proposed amendment both needed and reasonable.

The Hearing Examiner further finds that the amendment is not a "substantial change" according to the criteria set forth in 9 MCAR § 2.111. It does not change the fundamental purpose of the definition and classes of persons affected by the amendment were represented at the hearing. Although some specific carriers were not present (for example, no barge owner signed the register), the carrier industry as a group was well represented. Also, it should be noted that the amendment confers privileges on the group and takes no benefits away from it.

Independent trucking services that operate on a contractual basis and private carriers are excluded from the 2.3104 F. definition. Organizations such as the Minnesota Motor Transport Association and the Minnesota Transport Services Association argued that these carriers be included in this priority status definition. They pointed out that between 75 and 90% of all perishable products are hauled by independent trucking services and that private carriers perform essential transportation services. They argue that the rule applies a double standard to vehicles performing the same essential transportation services when "for hire" carriers and private carriers are excluded from the priority status classification.

The Agency responded to these arguments in its post-hearing comments. It recommended broadening the definition to include independent owner/operators if they are transporting goods under a lease for contract indicating their "for hire" status and if the truck driver or operator can produce such lease or contract.

The Agency opposed the suggestion that private carriers be included in the definition, giving the following reasons for its decision:

a. Most private trucking activities would not be essential to the welfare of the people of the state during a petroleum shortage.

b. The status of private carriers under the proposed rules will not severely limit their access to motor fuel. Private carrier trucks are classified as commercial vehicles. (Rule 2.3104 I). Although they would not be exempted from the sticker requirement and would not have access to motor fuel at retailers displaying yellow flags, these are the only exemptions from which private carriers would be excluded during a motor fuel emergency.

c. With the amendment to include independent trucking services in the definition, companies who ship their own freight will have the option to contract with "for hire" carriers if they need access to first priority privileges.

The Hearing Examiner finds that the proposed amendment to include independent owner/operators with certain restriction is both needed and reasonable and is not a substantial change under 9 MCAR § 2.111. The Hearing Examiner further finds that, although the Agency may be correct in its assertion that most services provided by private carriers would be non-essential during an energy emergency, it has not sufficiently documented that fact.

The Agency stated that the exclusion of private carriers from the definition was based upon the premise that they do not provide essential transportation services. There is no definition of "essential transportation services" in the rules and the Agency has failed to affirmatively present facts to show that private carriers do not provide essential services.

A primary objective of the proposed rules is to distinguish between essential and non-essential energy uses and provide for the continuation of only essential uses during a severe energy shortage. The inclusion of non-private carriers and the exclusion of private carriers from the definition is rationally related to the overall purpose of the rules only if the classification distinguishes essential from non-essential transportation services. Admittedly, private carriers are not heavily burdened by the exclusion, given the privileges they receive as commercial vehicles under the rules. However, even if the burden is small, the Agency must show by an affirmative presentation of facts that the rule is both needed and reasonable.

This defect may be cured by the inclusion in the rules of a definition of "essential transportation services" or by the inclusion of private carriers in the § 2.3104 F. definition. The adoption of either of these options would not constitute a "substantial change." see new language p. 4

28. Paragraph U. of Rule 2.3104 defines energy production. The definition identifies activities associated with the production and transportation of energy or primary fuels. Energy production is a priority motor fuel user and under the rules will be given allocation preference and exemptions from demand-restraint measures.

Mr. Rosenthal of the Minnesota Transport Services Association commented that the meaning of motor carrier was not clear in the definition and, as a result, might jeopardize the priority status of fuel transportation. The Agency agreed with Mr. Rosenthal and in post-hearing comments suggested adding to the definition that motor carrier means all those truck types included in the cargo, freight and mailing hauling definition for other trucks.

The Hearing Examiner finds that the rule and proposed amendment are both needed and reasonable to ensure that the citizens of the state will receive a continuous supply of heat and power during an energy emergency. The amendment clarifies the priority status of motor fuel transporation, makes the rules internally consistent (see, Rule 2.3104 F.) and is not a "substantial change" under the criteria set forth in 9 MCAR § 2.111. amended p. 6, 7

29. Rule 2.3106 A. deals with the Agency's role in the declaration of an energy emergency. The rule states that the Director may recommend to the Executive Council or Legislature that an energy supply emergency be declared when the Agency forecasts that within three months, demand for fuel will exceed supply.

This provision drew a number of comments. Generally, the comments expressed concern that the rule contains no specific guidelines. John Roper of the Koch Refining Company urged the Agency to calculate a threshold value that must be reached before the Agency can recommend the declaration of an energy emergency. The Agency replied that the simple criterion of a forecast of supply exceeding demand was selected because there are too many factors that may affect the seriousness of a shortage, such as the time of year and the expected duration of the shortfall, to devise a set formula for indicating the presence of an energy emergency.

Minn. Stat. § 116H.07 authorizes the Director to prepare and adopt an energy allocation plan specifying actions to be taken in the event of an "impending serious shortage of energy or threat to public health, safety or

welfare". What constitutes an "impending serious shortage" is left up to the discretion of the Agency.

The Hearing Examiner finds that the "demand exceeds supply" criterion does not conflict with the statutory mandate and is needed to give the Agency flexibility to consider a variety of factors that may contribute to an energy emergency in any particular situation. Can Manufacturers Institute v. State, 289 N.W.2d 416, 423 (Minn. 1979). However, the rule as written gives the Agency too broad discretion. Anytime demand exceeds supply, even by a small amount, the Agency is authorized to recommend the declaration of an energy emergency. When the Director makes the recommendation, the Executive Council or Legislature are likely to defer to the expertise of the Agency and declare an emergency.

Because of the Agency's influential position in this matter, the Hearing Examiner considers it appropriate to require an amendment to the rule that requires the Agency to furnish the Executive Council, Legislature and public with a written statement containing information on the factors the Agency considered in reaching its conclusion and the reasons for its recommendation. This will give the Agency the needed flexibility; yet it will inform the ultimate decision makers and the public of the factors considered in determining the need to recommend the emergency declaration. The adoption of such an amendment would not constitute a "substantial change". So amended p. 13.

30. Rule 2.3106 B. deals with the duration and renewal of a declared energy emergency. The rule states that an energy emergency automatically expires in 30 days unless it is renewed by the Legislature. Control Data Corporation, Minnesota Department of Agriculture and others argued that final authority to renew an energy emergency should be vested in the Executive Council to avoid both the expense of a special session if the Legislature is adjourned, and the conflicts that might result when authority to declare an energy emergency resides with one body and authority to renew it resides with another.

The Hearing Examiner finds that the rule in its present form is both needed and reasonable because Minn. Stat. § 116H.09, subd. 5 requires the Legislature to make the renewal decision and the Agency has no authority to change a statutory mandate.

31. Rules 2.3108 and 2.3109 deal with an appeal system designed to afford persons aggrieved by the energy emergency rules an opportunity to have impartial hearings on their complaints. The appeals will be heard by either Hearing Examiners from the Minnesota Office of Adminstrative Hearings or Local Energy Conservation Boards (Boards) which will be created in each county and in cities of the first class when an energy emergency is declared. The Hearing Examiners will generally handle those appeals that arise before an energy emergency is declared, or are of statewide significance. The Boards will handle all other appeals. A Board will consist of five members: two elected public officials from the county or municipality, a health professional, a county or city fuel coordinator and a member of the public. The Director will review all appeals and may affirm or reverse a decision of a Board or a Hearing Examiner.

Comments on the appeal system focused on three major concerns. First, the American Oil Company, the Minnesota Motor Association and others questioned the advisability of waiting until an energy emergency is declared before appointing the Board. They argue that Board members will be unfamiliar with the rules and unqualified to handle appeals. Mr. Miller of the Agency staff commented at the hearing that the needed expertise will be provided by the presence of the county or city fuel coordinator on the Board. However, in post-hearing comments, the Agency proposed an amendment that would give fuel coordinators the discretion to choose not to sit on the Board because they will be too busy with other responsibilities during an energy emergency.

The second concern expressed in comments on the appeals system related to exigency. The Ramsey County Commissioners and other groups criticized the proposed appeals system as being too cumbersome and slow to effectively process the urgent requests that are likely to arise during an energy emergency. The Agency responded in its Statement of Need and Reasonableness that the proposed system represented an attempt to reach a balance between the need for expeditious review and the need for a fair and impartial administrative hearing.

Thirdly, when the Agency solicited informal comments on its proposed rules in 1980, the Office of Administrative Hearings noted that some of the procedures in the proposed appeals system did not comply with the procedural rules of the Office of Administrative Hearings. The Chief Hearing Examiner questioned the extent of the Agency authority to adopt rules that contradicted Office of Administrative Hearings requirements. Minn. Stat. § 15.052, subd. 4 (1980) states that the procedural rules of the Office of Administrative Hearings shall be binding upon all agencies and shall supercede any other agency rules with which they may be in conflict.

The Hearing Examiner finds that it is beyond the Agency's statutory authority to promulgate rules for non-emergency conditions that conflict with the procedural rules of the Office of Administrative Hearings. This defect can be corrected by stating in the rules that the rules of the Office of Administrative Hearings will be followed in all hearings held prior to the declaration of an energy emergency.

The Hearing Examiner further finds that procedural rules applied during an energy emergency need not be in strict compliance of the rules of the Office of Administrative Hearings because due process does not require as high a level of formality in an emergency situation as under normal circumstances.

Aside from the defect mentioned above, the Agency has acted within the statutory bounds of its authority in adopting the appeals system rules and the Hearing Examiner finds them both needed and reasonable. A rule is not unreasonable simply because a more reasonable alternative exists. The Hearing Examiner may not substitute her judgment for that of the Agency. However, she offers some suggestions that the Agency might consider to improve the responsiveness of the appeals system. These suggestions need not be adopted by the Agency to make the rules reasonable. They are advisory only.

In attempting to design a system that expedites appeals and still comports with procedural due process requirements, the Agency has retained most of the formal procedural requirements of the rules of the Office of Administrative

Hearings, but has shorten the time frame for processing an appeal. One set of procedures will be followed by the Boards and the Hearing Examiners regardless of the nature of the appeal. This system generates the following problems:

a. The compromised time frame is too long to adequately deal with the urgent problems that need rapid resolution during an energy emergency and too short to permit proper disposition of complex matters.

b. The Hearing Examiner will be required to conduct hearings in a manner that does not comply with the rules of the Office of Administrative Hearings.

c. Board members, untrained in administrative law, will be required to apply sophisticated procedural rules.

The Hearing Examiner believes that the system needs conceptual differentiation and, to that end, makes the following suggestions.

a. As mentioned earlier, hearings held before the declaration of an energy emergency must be conducted according to the rules of the Office of Administrative Hearings. The energy emergency rules should merely refer to the Office of Administrative Hearings requirements rather than restating them.

b. The Agency should develop criteria for distinguishing which appeals require speedy decisions.

c. Appeals that arise after the declaration of an energy emergency that are of statewide significance and that do not require quick decisions should be handled by the Office of Administrative Hearings and the rules of that office should be followed.

d. Appeals that arise after the declaration of an energy emergency that concern matters of local impact and require a speedy decision should be heard by Local Energy Conservation Boards and less formal procedures followed.

e. The Agency should develop procedural shortcuts for handling appeals that require speedy decisions. The Agency should be experimental and explore alternatives to a full evidentiary hearing. For example, in some circumstances, provisional orders without a hearing may be appropriate if a hearing is available if requested by an affected person. The level of formality required by the Board should be lowered and clarified. Due process requirements need not be as stringently applied during an emergency as they must be in non-emergency situations.

One final suggestion regarding the appeals system rules. Rule 2.3109 A.2. includes the address of the Office of Administrative Hearings. The office is moving in January of 1982. Since the rules will not be finalized until 1982, the new address should appear in the rules. It is as follows:

Office of Administrative Hearings
Summit National Bank Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415

32. Rule 2.3110 deals with penalties. It is merely a restatement of the provisions of Minn. Stat. 116H.15. Pursuant to Minn. Stat. § 15.0412, subd. 1 (1980), no agency shall adopt a rule which duplicates language contained in a Minnesota Statute unless the Hearing Examiner determines that the duplication of the language is crucial to the ability of a person affected by a rule to comprehend its meaning and effect.

The Hearing Examiner finds that since the rule involves penalties, the duplication is justified in the interests of ensuring that people in the state are informed of the consequences of non-compliance with the energy emergency rules.

33. Rule 2.~~113~~ 3114 C.3. gives the state power to curtail delivery of fuel oil to specific industries when the supplies are not sufficient to meet the needs of all priority users. The order of curtailment is based upon an industry's energy-labor ratio which is defined as the ratio of an industry's BTU consumption of fuel oil and natural gas per employee per year.

Both the Minnesota Association of Commerce and Industry and the Minnesota Motor Transport Association stated that, as written, the rule is discriminatory because a firm can only be exempted if it can prove its energy conservation is less than an "industry average". They argued that since some industries are naturally more energy intensive than others, to prevent inequity in rating, individual companies should be compared to other firms within their own general business classification. The Agency agreed and proposed deleting the word "industry" where it appeared in the rule and substituting the words "industrial sector", making company comparisons within an industrial sector. The Agency also recommended deletion of the phrase referring to the 1980 energy conservation targets because they are outdated.

deleted p. 31

So amended p. 30

The Hearing Examiner finds that the rule and proposed amendments are both needed and reasonable. The rule as amended is not fundamentally different from the one proposed in the initial notice to the public and, therefore, is not a "substantial change" under the criteria set forth in 9 MCAR § 2.111.

34. Rule 2.3120 A.2.b. states that during a severe fuel oil shortage, owners and operators of diesel-powered automobiles may be requested to voluntarily reduce or discontinue use of their diesel vehicles. James Wright of the Minnesota Department of Transportation commented that this measure penalizes owners of diesel vehicles who have made an early commitment to energy conservation by purchasing such vehicles. He suggested that this provision be omitted or changed to encourage the use of diesel automobiles for car pools during a fuel oil shortage because of their fuel efficiency.

The Agency responded and the Hearing Examiner agrees that this measure was not intended to penalize owners of diesel vehicles, but rather to encourage them to help maintain a supply of fuel oil for home heating. The measure corresponds to the ranking of personal transportation as a second priority use of fuel oil as compared to first priority uses such as home heating and essential services. The measure is voluntary and only affects individuals to the degree they determine to be appropriate. Therefore, the Hearing Examiner finds that the rule is needed and reasonable as written.

35. Rule 2.3120 D. limits the purchase of motor fuel by vehicles with odd-numbered license plates to odd-numbered days of the month and vehicles with even-numbered license plates to even-numbered days and lists vehicles that will be exempted from the odd-even purchase requirement.

Brian Ettesvold of the Minnesota Service Station Association and Ted Shields of the Minnesota Association of Commerce and Industry, argued that this provision places too much responsibility on service station operators to decide who should or should not be able to purchase gas.

The Agency responded and the Hearing Examiner agrees that the odd-even system is an easily understood measure that people are likely to support. The Hearing Examiner finds that the Agency has sufficient documentation showing that the odd-even system will conserve motor fuel and facilitate the orderly purchase of it. The rule is both needed and reasonable.

Mr. Shields suggested that motor fuel retailers maintain a record of individuals seeking emergency exceptions to the odd-even and minimim purchase requirements. The Agency agreed with the suggestion and proposed to amend the rule to provide that retailers obtain the license number and the signature of those individuals requesting an exemption because of an alleged emergency. The Agency stated that this amendment would minimize abuses and eliminate some of the burden of enforcement placed on retailers.

The Hearing Examiner is not convinced of the value of this provision. If a vehicle operator has a record of emergency requests supposedly the retailer should infer that the operator is fabricating and deny any subsequent emergency requests from him. This places the retailer in the position of possible denying a bona fide request. It would seem to be preferable to generally honor emergency requests so no legitimate request is denied. The Hearing Examiner does not believe that the provisions of the amendment would deter those individuals who would lie about an emergency to be able to purchase gas. The Hearing Examiner finds that the rule provision as originally publicized is both needed and reasonable. The amendment is not needed as it would place an unnecessry record-keeping task on the retailers.

Nevertheless amendment is added p. 45 See FoF p. 1/21/82

36. Rule 2.3120 F. deals with flag requirements. During an energy emergency, motor fuel retailers will be required to display flags to indicate what type of service is available to motorists. Mr. Ettesvold of the Minnesota Service Station Association suggested that the flags be standardized to aid recognition and avoid aesthetic objections from municipalities. The Agency was persuaded by Mr. Ettesvold's remarks and proposed amending the rule to include the required size, material and location of the flags.

The Hearing Examiner finds that the rule and the amemdment are needed and reasonable and the amendment is not a "substantial change". amended p. 47

37. Rules 2.3121 B. and C. deal with recreational vehicle ban measures. These measures were intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles during an energy supply emergency. They were the most controversial provisions in these rules.

At the hearing in Grand Rapids and Mankato, recreational vehicle clubs and organizations presented data that contradicted the assumptions upon which the Agency based its estimate of the amount of fuel that would be saved by banning recreational vehicles. The estimated fuel savings was shown to be substantially smaller than the Agency had calculated. Representatives of the recreational vehicle associations pledged their groups to voluntary conservation and documented their past conservation efforts.

The Agency was persuaded that the gasoline savings gained by these measures would be less than it had estimated. On October 5, at the Saint Paul hearing, the Agency, in an order, withdrew the recreation vehicle ban measures and stated that the Agency would no longer consider them for adoption.

Pursuant to Minn. Stat. § 15.0412 (1980), an Agency may withdraw a proposed rule any time prior to filing with the Secretary of State. The Hearing Examiner finds that the deletion of rules 2.3121 A. and B. does not constitute a substantial change under the provisions of 9 MCAR § 2.111. The withdrawal of these rules does not introduce any new subject matter, it does not make a major substantive change that was not raised by the original Notice of Hearing in such a way as to invite reaction at the hearing, nor does it result in a rule fundamentally different from that contained in the Notice of Hearing.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule. The procedural irregularity noted at Finding 21 is technical in nature and no corrective action is needed.

3. That the Agency has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Finding 31.

4. That the Agency has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), except as noted at Findings 27 and 29.

5. That the amendments and additions to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 27, 29 and 31.

7. That due to Conclusions 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: November 25, 1981.

Phyllis A. Reha

PHYLLIS A. REHA
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
400 SUMMIT BANK BUILDING
310 SOUTH FOURTH AVENUE
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

April 21, 1982

Mr. Dwight S. Wagenius
Special Assistant
Attorney General
1100 Bremer Tower
Seventh Place and Minnesota Street
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Conservation and Allocation Plan During a Petroleum Supply Shortage (6 MCAR §§ 2.3101-2.3121); Docket No. EA-81-005-PR.

Dear Mr. Wagenius:

Enclosed herewith is the Chief Hearing Examiner's Report in the above-referenced matter. I am also returning what appears to be the original of the Findings submitted on April 20. We have kept a copy for our file.

Yours very truly,

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/341-7640

DRH:sw
Encs.

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EA-81-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT
ENERGY DIVISION

In the Matter of the Proposed Adoption
of Rules of the Minnesota Energy Agency
Governing Implementation of the State
Energy Supply Conservation and Allocation
Plan During a Petroleum Supply Shortage
(6 MCAR §§ 2.3101-2.3121).

REPORT OF THE
CHIEF HEARING EXAMINER

The above-entitled matter has been referred to the Chief Hearing Examiner for review pursuant to the provisions of Minn. Stat. §§ 15.0412, subds. 4-4f. A Hearing Examiner's Report was issued on November 25, 1981, and an initial Report of the Chief Hearing Examiner informing the Agency of actions it had to take to cure defects in the rules prior to adoption was issued on November 30, 1981. The rules were submitted to the Chief Hearing Examiner for review on January 27, 1982, resulting in a second Report of the Chief Hearing Examiner dated February 23, 1982, wherein it was stated that all defects in the rules had been cured except for one.

On April 20, 1982, the rules and amended Findings, Conclusions and Order Readopting Rules were submitted to the Chief Hearing Examiner. Having now reviewed all of the files, records and submissions herein, the Chief Hearing Examiner finds and concludes that the Agency has cured all of the defects previously found in the rules; that none of the changes in the rules constitute "substantial changes" which would require a new hearing; and that the Agency has complied with all substantive and procedural requirements imposed on the Agency by law and rule.

It should be noted that the Minnesota Energy Agency has now become the Energy Division of the Minnesota Department of Energy, Planning and Development. Therefore, the rules should be further amended to reflect that change. However, it is recognized that rules adopted by one agency which is subsequently merged into another agency, unless provided otherwise by law, remain in full force and effect until amended, repealed, or suspended by the successor agency. It is further recognized that the rules herein must be finally published within six months of the issuance of the Hearing Examiner's Report or they may not be adopted. Therefore, it remains for the Attorney General to determine whether the rules can be adopted without the changes necessary to reflect the merger. In the event the Agency chooses to voluntarily amend the rules to reflect the merger or is required to do so by the Attorney General, it is hereby found and concluded that those changes would not constitute a "substantial change" in the rules, requiring a new hearing.

Dated: April 21, 1982.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

EA-81-005-PR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING PROCEDURES AND MEASURES TO BE USED TO REDUCE DEMAND AND INCREASE SUPPLY OF PETROLEUM PRODUCTS DURING AN ENERGY SUPPLY EMERGENCY, 6 MCAR §§ 2.3101 THROUGH 2.3121.

REPORT OF THE
CHIEF HEARING EXAMINER

The above-entitled matter came on before Chief Hearing Examiner Duane R. Harves for the purpose of determining whether the agency has corrected the defects enumerated by the Hearing Examiner in her report dated November 25, 1981, and the Chief Hearing Examiner's report dated November 30, 1981. This review is required by the provisions of Minn. Stat. § 15.0421, subds. 4-4f.

Based upon a review of the agency's Order Adopting Rules, the Director's Findings of Fact and Conclusions, the rules as modified and the reports of the Hearing Examiner and Chief Hearing Examiner, it is found and concluded that, except as discussed herein, the agency has corrected the defects enumerated by the Hearing Examiner and the changes in the rules do not constitute substantial changes which would require a new hearing.

In her report of November 25, 1981, the Hearing Examiner found that the agency had failed to establish the need for or reasonableness of the rule excluding private carriers. The Examiner found that the defect could be corrected by including a definition of "essential transportation services" or by the inclusion of private carriers in § 2.3104 F. (See Finding of Fact 27.) The agency has chosen to exclude all trucks with a vehicle weight of less than 12,000 pounds. Other than the Director's Findings of Fact and Conclusions, there is no evidence in the record to support the 12,000-pound limitation. Minn. Stat. § 15.0412, subds. 4-4f, require that the agency shall, at the hearing, make an affirmative presentation of facts establishing the need for and reasonableness of each rule. Presenting facts, for the first time, in the agency's Findings of Fact does not satisfy this requirement. The purpose of the statutory provision is to insure that the public has an opportunity to know what the agency is relying upon in adopting its rules so that they can respond.

see added language p. 4

Therefore, the agency has failed to correct the defect in the rules as required by the Hearing Examiner and Chief Hearing Examiner in their prior reports. The agency must either include a definition of "essential transportation services" in the rules or include private carriers within § 2.3104 F. It must withdraw the phrase "all trucks with truck license plates or stickers indicating a vehicle weight of at least 12,000 pounds;". Should the agency include a definition of "essential transportation services", no representation is made herein that it would or would not constitute a substantial change in the rules requiring a new hearing.

Dated: February 23rd, 1982.

DUANE R. HARVES
Chief Hearing Examiner

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STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

ENERGY DIVISION

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Conservation and Allocation Plan during a Petroleum Supply Shortage 6 MCAR §§ 2.3101 - 2.3121	Docket No. EA-81-005-PR Findings, Conclusions and Order Readopting Rules

The Chief Hearing Examiner in his Report dated February 23, 1982 found that the rules as adopted included changes that corrected all but one of the problems uncovered during the public hearings. This deficiency relates to the inclusion of private carriers in the definition of Cargo, Freight, and Mail Haulers (§ 2.3104 F).

Due to the recent merger, this matter will now be resolved by Commissioner Kent Eklund of the Department of Energy, Planning and Development rather than the Director of the former Energy Agency (currently the Energy Division).

In light of the concerns of the Chief Hearing Examiner, the Commissioner finds that that following definition of private carriers should be included in § 2.3104 F:

> ...trucks that have bodies specifically designed for cargo and freight hauling and are commercial vehicles as defined in 6 MCAR § 2.3104 I; ...

The Commissioner has also readopted the rules to include this change.

The above change is necessary in light of testimony given during the hearings. Freight haulers, as defined in § 2.3104 F, are one of the nine first priority users of motor fuel listed in § 2.3112 of the rules. The first priority designation entitles these nine users to certain privileges during an emergency because of their importance to health, safety and the state economy. The Energy Agency originally restricted § 2.3104 F to include only for-hire trucking regulated by the Minnesota Public Utilities Commission. However, James Denn of the Minnesota Motor Transport Association testified during the hearings that § 2.3104 F should also include private carriers, i.e., companies that maintain trucking operations for transporting their own freight.

In her Report of November 25, 1981 the Hearing Examiner found that the Agency had not established the need for or reasonableness of excluding private carriers. The Hearing Examiner suggested that the Agency correct the defect by defining essential transportation services or by including pirvate carriers in § 2.3104 F.

The Energy Agency chose the second option, but the method of defining private carriers has not yet been resolved. The approach taken in the Director's Finding of Fact dated January 21, 1982 was to include all trucks weighing 12,000 pounds or more in the definition of Cargo, Freight and Mail Haulers. The response of the Chief Hearing Examiner has been that the evidence given in support of the weight limitation should have been included in the public record for this to be an acceptable change. Therefore, these Findings of Fact and Conclusions discuss an alternative approach that does not require the submission of new evidence.

1. The Significance of First Priority Status for Private Carriers

The Energy Agency has contended that the exclusion from first priority status during an emergency would be more of an inconvenience for private carriers than a major disadvantage. Nevertheless, the inconvenience is certainly great enough that private carriers should be given first priority status if this activity is as important as other first priority uses of motor fuel.

The first priority designation is used primarily as a means for exempting certain activities from particular emergency measures for motor fuel in §§ 2.3120 and 2.3121 of the rules. The priority system would also affect the release of state set-aside product during a declared emergency. (See § 2.3112 B.3.) This consideration would only affect private carriers that had storage facilities for motor fuel and applied for state set aside product at a time when requests exceeded available supplies.

The primary advantage of first priority status for private carriers would be the exemption from the sticker requirement in § 2.3121 A. This measure would require individuals and companies to not use any of their vehicles on a specified day of the week, except for vehicles specifically exempted in § 2.3121 A.3. Another potential advantage of first priority status would be special access to motor fuel retail outlets that chose to fly a yellow flag under the flag system (§ 2.3120 F).

2. The Rationale for Including Private Carriers in § 2.3104 F

Adding private carriers to § 2.3104 F requires considering whether the public record provides a basis for making this change. On this question, the Commissioner agrees with the finding of the Hearing

Examiner on page nine of her Report that adding private carriers would not constitute a substantial change.

This conclusion is supported by three considerations. First, the change has been made in response to public testimony. Mr. Denn, a representative for private freight carriers, testified that private carriers are an important component of Minnesota's freight system and should, therefore, receive the same exclusion reserved for regulated, for-hire trucking. Second, the change discussed in these findings is a simple addition that confers benefits to private carriers rather than imposing restrictions.

Finally, private carriers certainly fall within the general requirements for being a first priority user of motor fuel. Page 19 of the Statement of Need and Reasonableness defines first priority activities as those uses of motor fuel that are necessary to preserve health and safety or are crucial to maintaining primary transportation services for the movement of people and goods. Pages seven and eight state that freight movement in particular should be first priority because of its importance to the functioning of the state economy. The Energy Agency had initially excluded private carriers because private trucking operations for retail trade are perhaps less important than many other forms of freight movement. Nevertheless, private carriers, as a key component of the trucking industry, fit within the expressed intent of the first priority designation.

3. Advantages of the Adopted Definition For Private Carriers

The main advantage of the adopted definition of private carriers over the previous weight limitation is that no new evidence is needed. The weight limitation was a proxy rather than a direct definition of

private carriers. Thus new evidence was needed to demonstrate the validity of the 12,000 pound cut off point. The adopted definition avoids this problem by directly defining private carriers.

The new definition also meets two other important requirements. Because most vans and pickups are owned by individuals for personal use, the definition should be worded to exclude these non-freight uses of vehicles designed to handle light freight hauling needs. The adopted definition does this by including only commercial vehicles as defined in § 2.3104 I. This definition is a straightforward and noncontroversial component of the adopted definition for private carriers.

The definition of private carriers should also be simple to administer. Otherwise, retail outlets operating under a yellow flag (§ 2.2120 F) could have difficulty determining if a vehicle was first priority. The adopted definition meets this requirement by depending only on a reasoned judgement as to whether the vehicle is designed for freight hauling and looks like a commercial vehicle according to § 2.3104 I. Attendents at retail outlets should have no difficulty with this approach.

4. Correction in § 2.3108.A

The adopted rules also include a correction to § 2.3108.A in the rules. The change corrects the listing in § 2.3108.A of those appeals heard by energy conservation boards so that it matches the list in § 2.3109.A.1. The lists were originally inconsistent because of an oversight by the Energy Agency

It should be noted that the lists still read differently because

one specifies the measures that energy conservation boards will handle and the other specifies measures they will not handle.

Conclusion

Based on the above findings, the Commissioner concludes that the minor modification to § 2.3104 F is needed and reasonable and does not constitute a substantial change. In accordance with Minn. Stat. § 15.0421, subds. 4-4f., the Commissioner submits these findings and conclusion to the Chief Hearing Examiner for approval before sending the rules to the Office of the Attorney General, and hereby readopts the rules including the change addressed above.

Date: April 13, 1982

Minnesota Department of
Energy, Planning and Development

Kent Eklund

KENT EKLUND
Commissioner

STATE OF MINNESOTA
MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Conservation and Allocation Plan during a Petroleum Shortage, 6 MCAR § 2.3101-2.3121.

EA-81-005-PR

Director's Findings of Fact and Conclusions

Introduction

The Hearing Examiner in the above entitled matter did an excellent and thorough job in her Report. The Findings and Conclusions of the Examiner are adopted as the Findings of the Director, except as noted below.

The Report of the Hearing Examiner concerning the proposed rules identifies no major deficiencies based upon need or reasonableness. However, findings 27, 29, and 31 of the report do require responses, and in light of these findings the Agency has proposed additional minor changes to the rules where necessary. These changes are included in the adopted rules, along with all other changes made since the publication of the proposed rules in the State Register.

Finding 27

Based on Finding 27 of the Hearing Examiner and the comments of James Denn of the Motor Transport Association, the Agency has included all privately owned trucks weighing at least 12,000 pounds in the definition of Cargo, Freight and Mail Haulers (2.3104 F). The definition originally excluded all private carriers. The Hearing Examiner finds on page nine of her report that this exclusion cannot be made unless there is an affirmative presentation of facts that the exclusion is needed and reasonable. For the reasons stated below, the above change effectively includes those trucks that private carriers use for freight hauling without including light trucks, which are generally used for other purposes.

The rules include freight movement as a priority one use of motor fuel because of its importance to the functioning of the economy. Thus, the definition should include only those trucks and other modes of transport used for this purpose. The definition must also permit some means for identifying these trucks in a clear and simple manner.

An important advantage of using vehicle weight in the definition is its simplicity. All trucks receive license plates with a designated weight class because registration fees are assessed according to vehicle weight. In Minnesota 12,000 pounds is the minimum truck weight for one

of the license categories. Thus, the license plate sticker of a privately operated truck would determine eligibility for priority one status. This approach provides for easy administration and enforement of the exemptions for freight haulers.

The Agency has selected 12,000 pounds as the cut off point because medium and heavy trucks provide the critical transportation link for insuring the accessibility of goods and services. According to the 1977 Census of Transportation, 97 percent of all light trucks (those with a gross weight of less than 10,000 pounds) are pickups and vans, and 56 percent of these vehicles are used for personal transportation. Another 25 percent of light trucks are used for agricultural purposes or by utilities, which are both already priority one uses of motor fuel. The remaining 19 percent of light trucks are used primarily for construction, wholesale and retail trade, and services. These uses of motor fuel are not significantly more important than personal transportation for work and other purposes. Therefore, second priority status should provide adequite protection.

The two motor fuel measures connected with the priority one designation should not create major disadvantages for excluded light trucks. These measures include the flag system and the vehicle permit-sticker measure.

The flag system has been developed to end the favoritism that some retailers practiced during the past two shortages. This measure requires retailers to make gasoline available to more important priority one uses rather than favored customer when their inventories are low. While this system will eliminate favoritism, it is not intended to be a significant tool for allocating motor fuel. Most retailers will probably be willing to distribute only a small portion of their gasoline capacity under a yellow flag. Thus, priority one vehicles will not have significantly greater access to motor fuel.

The vehicle permit-sticker measure is intended to increase ridesharing and reduce work related travel. It would induce consolidation of trips into 6 rather than 7 days per week and would generally encourage less reliance on travel in conducting personal and business affairs. While this measure would only confuse long distance freight movement, use of light trucks for local hauling is generally more flexible. This measure would only be implemented during a severe shortage when strong actions are necessary. However, companies and individuals who are unduly burdened by permit sticker measure, or any other aspect of the emergency rules, can receive special exemption through the appeals process for the rule.

For the above reasons, the Agency believes that the addition of all trucks weighing over 12,000 pounds better defines Cargo, Freight, and Mail Hauling for the purposes of these rules. The use of gross vehicle weight is especially advantageous because of the ease of identifying the appropriate trucks.

Finding 29

Rule 2.3106 A states that the Director of the Energy Agency may recommend that an energy supply emergency be declared. The Hearing Examiner concludes in Finding 29 that this rule should require the Agency to prepare a written statement explaining the basis for the recommendation. The statement would permit the Executive Council or Legislature to make an independent judgement of the need for an emergency.

As a practical matter, neither the Executive Council nor the Legislature would declare an energy supply emergency without written factual justification. The Agency's recommendation to declare an emergency in 1977 was accompanied by a written document, and any future recommendations would also include background information and analysis. Therefore, the Agency agrees with the Hearing Examiner that this practical requirement should be made explicit in the rule. The addition is included in the adopted rules.

Finding 31

Rule 2.3109 outlines an appeals system for review of complaints and requests for exemptions from the rules. In Finding 31 the Hearing Examiner states that prior to an emergency this appeals process should follow the rules of the Office of Administrative Hearings and that there should be language in 2.3109 to this effect. The Agency has changed 2.3109 C.2 in response to this finding. The new wording also states that the provisions of 2.3109 will supercede the rules of the Office of Administrative Hearings during an emergency to the extent they are in conflict. As the Hearing Examiner notes in Finding 31, the timing for a hearing may be shorter and some procedural rules modified during an emergency to facilitate prompt handling of a large number of appeals.

The Hearing Examiner also makes several recommendations for improving the appeals process. She notes on page 11 of her report that these recommendations are advisory and not based on any finding of lack of need or reasonableness.

The proposed rules specify that most appeals will be decided by local energy conservation boards to be formed when an energy supply emergency is declared. These boards will permit prompt local resolution of a large number of appeals. Appeals for gaining priority one status or exemptions from four of the mandatory measures in the rules will be decided by the Office of Administrative Hearings. The four measures include the preparation of emergency conservation plans by large employers and primary and secondary schools (2.3120 B and C). Because these plans must be submitted prior to an emergency, a permanent body must be available for hearing appeals. The Office of Administrative Hearings will also handle appeals for determining priority one status, curtailing fuel oil, and relaxing environmental standards (2.3111, 2.3112, 2.3114 C.2 and C.3) because many of these hearings could be complex and will require total consistency throughout the state. During an emergency, both of the above bodies must schedule hearings at least seven working days after receiving a written appeal.

The Hearing Examiner has expressed concerns that this system will (1) be too slow for urgent cases, (2) require the Office of Administrative Hearings to follow several procedures that do not conform to its own rules, and (3) require inexperienced local board members to conduct hearings according to sophisticated procedural rules. As an alternative the Hearing Examiner suggests developing a two-tiered system in which local boards decide more urgent appeals under more relaxed procedures and the Office of Administrative Hearings decides less urgent cases with greater statewide impact. The Office would then be able to follow its normal rules of procedure.

The Agency has considered the criticisms and the suggested alternative but still prefers the present approach, except for one minor modification.

Concerning timely disposition of urgent appeals, the proposed rules already require a very prompt response to appeals made during an emergency. Hearings are to be held within seven working days after written appeals are received. After considering the Hearing Examiner's concern about urgent appeals, the Agency has concluded that only three of the measures create a burden sufficient to require hearings sooner than this. Thus our preferred approach is to stipulate that these three measures must not take effect until 10 days after the affected parties are notified. This change has been made in the attached rules under each of the three measures. They include curtailing fuel oil deliveries (2.3114 C.2), requiring conversions to residual oil where possible (2.3114 B.5), and ordering firms without emergency conservation plans to institute a compressed work week (2.3120 B.10). The change has not been made for the one-day driving ban (2.3121 C) because this measure is intended to be used during a severe shortage that would already be creating an extraordinary hardship for most Minnesotans.

Concerning the emergency procedures for those appeals decided by the Office of Administrative Hearings, the Agency wishes to retain the approach of the proposed rules. The potentially most difficult change in procedure required by the rules is the short time period for hearing and deciding appeals. This change is necessary because an energy supply emergency by its nature involves temporary requirements that may be removed in a matter of weeks or even days as conditions improve. A declared emergency would only last 30 days if it were not renewed. Thus an appeals system that cannot provide exemptions quickly would be ineffective. As an aid to quickly resolving appeals, the Agency intends for the Hearing Examiners to make full use of the provision in the rules for informal dispositions of appeals through consent orders and agreed settlements. (See rule 2.3109 C.6.) Prior to an energy emergency, Hearing Examiners would follow their own rules completely.

Concerning the inexperience of local energy conservation boards with procedures for hearings, the Agency prefers not to establish more relaxed procedures. The Agency also does not expect that local energy conservation boards will have undue difficulty with the procedures. The proposed rules direct county or city attorneys to advise local boards;

assistance with the application of hearings procedures would be part of the attorney's role. County fuel coordinators will also be a source of assistance. There will be workshops for fuel coordinators on the Petroleum Supply Emergency Rules, and even those fuel coordinators who choose not to sit on the board should take an active role in instructing board members about the emergency rules and procedures to use for the hearings. The Agency envisions the local boards as a means of disposing of the large number of routine appeals in a fair and simple manner. The Hennepin County Attorney has informed the Agency that he intends to use the option for informal disposition in most cases during an emergency. (See rule 2.3109 C.6.) The Agency also believes it will require only a few hearings before board members will grow accustomed to the procedures of formal hearings. In any case, it is important to preserve individuals' rights to due process as much as possible despite the declaration of an emergency.

The Agency recognizes that, except for the finding related to hearings held prior to an emergency, the suggestions on the appeals system were made out of a concern for improving the appeals process rather than findings of insufficient need or reasonableness. While deciding not to change the basic structure of the appeals system, the agency appreciates and has benefited from the suggestions.

Finding 35

Public comment during the hearings was the basis for our wish to make a minor change to the odd-even and minimum purchase requirements (2.3120 D and E). The change requires individuals requesting exemptions to these measures to sign a record kept by the motor fuel retailer. The Hearing Examiner has found that this provision places an unnecessary record-keeping burden on retailers.

The Agency wishes to retain the proposed change. During the hearings Mr. Ettesvold of the Minnesota Service Station Association contended that the odd-even measure places too much enforcement burden in the hands of motor fuel retailers. By having individuals sign a written record, the retailers are freed from deciding themselves the legitimacy of requests for exemptions. At the same time, fewer motorists would ask for exemptions if they had to sign a record to vouch for the credibility of their request. Thus the retailers' responsibilities under this rule are reduced by the additional requirement.

Retailers would not be unduly inconvenienced by the procedure of keeping signatures. Maintaining the appropriate record would require no more than a note pad stating at the top that the below signed persons received emergency exemptions from the odd-even or minimum purchase rules. Emergency Operating Center would be responsible for collecting and reviewing the records and deciding if any response were necessary.

Conclusion

Conclusion 6 of the Hearing Examiner's Report specifies three findings in which changes were required in the proposed rules. For each

of the findings (including findings 27, 29 and 31), the Agency made the change as recommended. However, certain additional rule change recommendations included in the Report of the Hearing Examiner have not been accepted for the reasons discussed in the above Findings of Fact and Conclusions.

Based on the Findings and Conclusions here reached, the Director has adopted the proposed rules with the changes indicated above in a separate Order Adopting Rules.

January 21, 1982

Respectfully submitted,

MINNESOTA ENERGY AGENCY

MICHAEL J. MURPHY
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Emergency Conservation and Allocation Plan During a Petroleum Shortage, 6 MCAR §§ 2.3101 - 2.3121.

Docket No. 81-005-AK

Statement of Need And Reasonableness

The above-captioned rules are proposed by the Minnesota Energy Agency ("MEA" or "Agency") to make permanent a set of temporary rules regarding fuel oil shortages, 6 MCAR §§ 2.3101 - 2.3108 (5 S.R. 1091 - 1099, January 5, 1981) and a set of rules published in Draft as the Emergency Motor Fuel Conservation Plan, 6 MCAR §§ 2.3120 - 2.3132 (5 S.R. 1375 -1387, March 9, 1981), revised and combined into the Petroleum Supply Emergency Rules.

The Agency recognizes its statutory obligation at the public hearings to make an affirmative presentation of facts establishing the need for and reasonableness of the rules proposed for adoption. (Minn. Stat. § 15.0412, subd. 4 (c) (1980)). This statement constitutes all or most of the Agency's affirmative presentation. The Agency may supplement this statement at the hearing if necessary, but will not raise any new issues or propose any additional conservation measures.

Authority

The MEA was directed in the original version of the Minnesota Energy Agency Act, Minn. Stat. Ch. 116H (1974) to promulgate an energy supply emergency conservation and allocation plan. The Agency first prepared and issued an Emergency Conservation and Allocation Plan in 1976. This plan was subsequently amended in a manner set forth in Minn. Stat. §§ 116H.07(b) and 116H.09.

In 1979 the Legislature amended section 116H.09 to require that revisions of the emergency conservation and allocation plan be made according to the Chapter 15 rulemaking procedures rather than the procedures set out in subdivision 2 of section 116H.09 (Minn. Laws 1979, Ch. 2, § 17). This amendment also authorized plan revisions by temporary rulemaking to provide authority to implement the Fuel Oil Emergency Plan pending promulgation of final rules.

Further authority for the proposed rules is found in the Federal Emergency Energy Conservation Act of 1979, Pub. L. 96 - 102, 42 U.S.C. § 6201 (1980).

Other rules which will be cited are:

Minn. Rule MUSHC 41f and 6 Minn. Rule APC 1, 4, 32.

MEA Exh 9

One or more of the following expert witnesses employed by the Minnesota Energy Agency may be called upon to testify: Abigail E. McKenzie, Oil Analyst; David Miller, Emergency Rules Analyst; David Buller, Manager Supply and Demand Analysis; Richard Wallen, Assistant Director, Data and Analysis Division. The above named individuals played a substantial role in developing the proposed rules or are experts on the topic of petroleum fuels. They will be available to testify on the need for and reasonableness of the proposed rules and to respond to public inquiry.

The justification of the need and reasonableness of the proposed rules is established in the following paragraphs.

The proposed rules specify the actions to be taken in the event of a petroleum fuels supply emergency. The need to adopt such rules arises, in part, from legislative mandate.

> It shall be the duty of the director to: ...
> (b) Prepare and adopt an emergency allocation plan specifying actions to be taken in the event of an impending serious shortage of energy, or a threat to public safety or welfare.

Minn. Stat. § 116H.07 (b) (1980).

> Subdivision 1. Within nine months after March 29, 1974, the director shall prepare and issue an emergency conservation and allocation plan in the matter set forth in subdivision 2. Such plan shall provide a variety of strategies and staged conservation measures to reduce energy use and in the event of an energy supply emergency, shall establish guidelines and criteria for allocation of fuels to priority users. The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and allow a choice of appropriate responses.

Minn. Stat. § 116H.09, subd. 1 (a)-(g) (1980).

The rules are needed to prescribe the plan of actions that will be taken by the State during an energy supply emergency. The rules will inform the citizens of the State, especially petroleum fuels suppliers and consumers, of the action plan and of their responsibilities with regard to these actions. These rules are intended to minimize the personal, social, and economic disruption resulting from a petroleum fuels shortage and ensure the equitable distribution of petroleum supplies during such a shortage.

Rules 2.3101 and 2.3102 express the Energy Agency's authority to promulgate these rules, the purpose that the rules are intended to serve, and the circumstances during which the rules will be used.

INTRODUCTION

Both the Congress and the Minnesota Legislature have recognized the vulnerability of the United States to petroleum shortages. This recognition and concern spawned legislation that mandates State emergency conservation plans. These rules have been developed and are proposed to satisfy these legislative requirements.

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The Rules

2.3104 Definitions

Rule 2.3104 provides definitions of the terms which are significant in understanding the State's energy supply emergency response mechanism and applying the rules. Terms which have special significance to the emergency plan or for which there is no common understanding are explained in greater detail in this section. These term descriptions are intended to support and prove the need for and reasonableness of these definitions.

Agriculture includes generally all activities of establishments that are primarily engaged in food production, processing, and distribution. The Standard Industrial Classification Manual, 1972 edition, is used to define establishments according to the industry codes listed therein. Agricultural activities are first priority uses of both fuel oil and motor fuel and thereby qualify for preferences and exemptions under these rules.

The definition for agriculture and its first priority status is a recognition of the importance of a steady food supply for the welfare of the people of the State. A substantial portion of agricultural activities must be accomplished in a relatively short and critical time period. Spring planting must be done when weather allows. Pesticide applications are often made only to prevent total destruction to crops. Dairy herds must be milked everyday and the milk processed regularly. Perishable fruits and vegetable have to be harvested and distributed quickly and directly to ultimate consumers. Veterirnarians, fertilizer and herbicibe distributors, farm machine mechanics, and wholesale distributors of food products, just to name a few, are necessary auxilliary services in the food production system. A few exlusions have been made to the broad industry groups set forth in the S.I.C. manual. These establishments have little or no connection to food production, processing, or distribution. Non-essential "food stuffs" e.g. beverages and candy and confectionary products for instance, have been excluded. The S.I.C. Industry code definitions which comprise this definition of "Agriculture" are listed in Appendix A.

The Assistant Director of the Minnesota Energy Agency is defined and included because it is the responsible position in the Agency for seeing that employer and school district emergency motor fuel conservation plans are reviewed, and if acceptable, certified as provided in 6 MCAR § 2.3121 B.

Baseline consumption is an estimate of the motor fuel consumed incident to the operation of a business or a school, including employees' travel to and from work. An employer's (or school's) baseline consumption includes the motor fuel consumed by employees and students in the work or school trip plus the motor fuel consumtpion directly attributable to business or school sponsored travel.

Major employers and school districts would be required to calculate their baseline consumption if they choose the self-stlyed conservation plan option in lieu of adopting strategies as provided in the rules. The need for a computation of baseline consumption is to provide a benchmark against which proposed conservation actions can be measured.

The collection of consumption data may be accomplished through direct employee surveys or sample surveys of daily commuting patterns. The formula for arriving at a business' baseline consumption is; (1) the sum of employee's average daily work trip (roundtrip) by mode divided by the average mpg for the transportation mode (i.e., 15 mpg for automobiles) plus (2) the motor fuel consumed in travel for business purposes. Mathematically expressed as follows:

$$B = \sum_{j=1}^{n} \frac{Mij}{mpgj} + \frac{Whi}{mpg}$$

j = types of transportation
Mij = miles traveled by mode j
mpgj = efficiency of mode j
Whi = business travel

The following is an example of how the baseline consumption might be calculated for a worksite.

STEP ONE: Survey the employees as to commuting patterns
STEP TWO: Compile a table of data generated from the survey. A worksite profile was made for the Minnesota Energy Agency providing the following information.

see attached TABLE 1

For the Energy Agency then, baseline consumption is the sum of:

(1) single occupant auto travel consumption:	48	gal/wk
(2) carpool consumption:	83	gal/wk
(3) vanpool consumption:	25	gal/wk
(4) motorcycle:	+ .6	gal/wk
	= 156.6	gal/wk
X 50 weeks	= 7800	gal/yr
Plus Agency travel amounting to	7650	gal/yr

The annual average commuting consumption of 7800 gallons plus annual average agency consumption of 7,650 gallons yields a total baseline consumption of 15,450 gallons a year.

For the Agency to qualify as having an emergency conservation plan, it would have to implement strategies now or in an emergency which would have the combined effect of reducing baseline consumption by 15 percent. Thus, the 15,450 gallons a year normally used would have to be reduced to 13,132 gallons on an adjusted annual basis.

Three methods for determining the period for estimating the annual baseline consumption are permitted.

The first method is simply an estimate of the past year's consumption. This method was illustrated by the employee commuting survey in the previous example. Employees were asked to estimate their commuting patterns for the past year.

TABLE 1

Commuter Profile for the

Minnesota Energy Agency, March 1, 1981

Transportation Type	The number of employees using this type/ percent of total	Ave. dist. (miles)	Ave. Vehicle Occupancy	Ave. Weekly Vehicle Miles	Pass. Miles per gallon	Ave. fuel use (gallon) per person per week	Ave. fuel (gallons) consumption by type
Single Occ. auto/ truck	14 / 12.5%	11.5	1	720	15	3.4	48
Carpool	36 / 32%	19.7	2.75	1212	40	2.5	83*
Vanpool	5 / 4.5%	46.2	11.5	250	96	2.1	25**
Bus	50 / 45%	11.2	-	-	-	-	-
Bicycle	5 / 4.5%	5.5	1	27.5	-	-	0
Pedestrian	1 / 1%	3.5	-	-	-	-	0

Total employees responding 112 out of a total workforce of 130. This will increase the Agency commuter consumption estimate by a factor of 1.16.

* The carpool consumption estimate is based on the fuel use of 13 vehicles traveling 98.5 miles per week with an average fuel efficiency of 15 mpg.

**The vanpool consumption estimate is based on the fuel use of one van traveling 250 miles per week with a fuel efficiency of 10 mpg.

A second method provided for calculating baseline is a three-year average. This method was used in estimating the Agency's business travel. The Agency travel by state and private autos for the past three years is displayed in the following table:

	STATE CAR (VMT)	PRIVATE AUTO (VMT)	TOTAL
1978	65,664	56,647	122,311
1979	77,063	35,214	112,277
1980	87,944	21,692	109,636
Average	76,890	37,851	114,741

The annual average vehicle miles divided by 15 mpg average fuel economy yields 7,650 gallons.

The third method is a "rolling average" based on a 12-month period. In using the rolling average, the latest month for which data is available is added to the "base" and the thirteenth month's data is dropped. The method permits an accurate estimate of the ongoing consumption patterns of a business and would be preferred for those businesses experiencing a continuous decrease in fuel use because it reduces the amount of baseline consumption and therefore the absolute amount equal to 15 percent thereof.

Cargo, freight and mail hauling, including newspaper delivery is a broad category of transportation classified as priority motor fuel consumers. This category includes both intrastate and interstate registered-for-hire motor carriers, local cartage carriers, postal carriers, and newspaper delivery vehicles. Information on "for-hire" motor carriers supplied by the Public Utilities Commission gives the following profile of commercial trucking under this definition:

828	Contract carriers	
671	Livestock carriers	
1101	Irregular route carriers	
600	Local cartage carriers	
250	Courier services	
100	Charter carriers	
90	Regular route carriers	(Mn/DOT estimates these firms operate over 835 trucks across Minnesota)

and 10,000 registered Interstate carriers traversing the State of Minnesota.

In addition, vehicles of the U.S. Postal Service and newspaper delivery vehicles fall under this definition.

The designation of a special category of transportation energy consumers recognizes the essential service these firms provide in the State's economy. Commercial trucking is the linch pin between sellers and purchasers of raw materials in the market.

A trucking stoppage due to the unavailability of fuel would have a debilitating effect of the state's economy, forcing the closing of industries and causing the layoff of thousands of workers whose jobs are tied to the constant influx of materials which trucks provide.

The priority assignment of "for-hire" trucking and the measures contained in these rules enables the State to take action to ensure that this vital class of operators are kept running during a motor fuel shortage.

Carpool is defined simply to establish the minimum number of passengers per vehicle required before an employer can certify a carpool under the Employer based conservation measure.

Commercial vehicles are defined to establish a specific class of vehicles exempt from the odd-even fuel purchase restriction. Commercial vehicles include those vehicles licensed commercial class with the Division of Driver and Vehicle Services and all other vehicles being used for commercial purposes.

Emergency vehicle is defined to include: law enforcement activities, fire fighting, ambulance services, emergency utility repairs, emergency road or traffic signal repair, snow removal, search and rescue operations, and vehicles designated by the county sheriff or Division Director as emergency services vehicles. Emergency vehicles are priority motor fuel consumers because of the essential services they provide in protecting and preserving the health and welfare of the citizens of the State.

Energy production is defined to include all activities necessary to provide continuous sources of heat and power to the citizens of the State. Electrical generation driven by petroleum power is excluded because it uses the fuel source that is presumed to be in short supply in these rules. Energy production is a priority motor fuel consumer and under the rules will be given allocation preference and exemptions from demand-restraint measures.

Essential government services encompasses all constitutionally required services of the State, especially judicial services. In addition, services providing income maintenance to the poor and elderly are included. As a result, groups dependent on these sources of income will not have them interrupted during the shortage. Essential government services include both use of motor fuels for vehicles providing services and use of fuel oils in heating buildings used to conduct activities of government.

Forecast is defined as a projection of future demand for or supply of petroleum supplies. Forecasts may rely on econometric techniques but are not solely limited to scientific methods. Firsthand reports from suppliers, refiners and consumers throughout the State or news of national or international significance relating to world petroleum markets may also be taken into account. The information used in making these projections will include, but is not limited to, petroleum product inventories, pipeline capacity, refinery yield, effect of conservation measures, product prices, relevant weather conditions, and level of economic activity.

Fuel oil is defined as middle distillates used in home heating and residual oils used largely in industrial power generation. The definition is needed to specify the fuel type for which certain emergency conservation measures apply.

Health and residential care services include all facilities whose occupants are in residence for health or security reasons.

Jitney is defined because it is an optional employer conservation strategy under the Employer based conservation measure.

Military uses is defined to make allowance for emergency military operations as a priority motor fuel consumer. While standard National Guard maneuvers, for instance, may not qualify as necessary for perserving the health and safety of the citizens of the State, the use the Guard to ensure delivery of energy supplies clearly is.

Motor fuel is defined simply a mixture of volatile hydrocarbons. Motor fuel is broadly defined so has to permit the application of the motor fuel emergency conservation rules to whatever transportation fuel is or could become in short supply.

Passenger transportation services are priority motor fuel consumers under the rules. Passenger transportation services are defined to include air, rail, water, and bus passenger transportation services. The applicability of the priority assignment of air services is limited to aviation ground support vehicles, jet fuel not being considered a motor fuel. Passenger transportation services are important links between large numbers of people and the jobs and services they provide. The interruption in public transportation due to the unavailability of fuel would undoubtedly force many transit users to other much less energy efficient means of tranportation. Passenger transportation additionally contains less traditional passenger services such as vanpools, subscription buses, and taxicabs.

Plant protection includes those actions necessary to prevent damage to buildings or property, such as frozen pipes, resulting from cold weather, rain or high winds. It also includes measures necessary to secure buildings from robbery or vandalism, such as operation of electronic warning devices and lighting. Plant protection activities are exempt from compressed workweek orders and mandatory driving bans.

Residence is a first priority use of fuel oil. Hotels and motels are included because people frequently live in such places. Furthermore, people who are traveling may be considered to be living in hotels and motels.

Sanitation services are services necessary for sewage treatment, solid, liquid and hazardous waste disposal and treatment and purification of water for public consumption. Sanitation services are essential to maintain the health and safety of the citizens of the State and are designated first priority fuel oil and priority motor fuel consumers.

Telecommunications is defined because it is a first priority use of fuel oil and a priority consumer of motor fuel. Telecommunications includes services necessary to insure that information can be transmitted to the citizens of the State. It also includes repair and maintenance of such services so that disruption from mechanical failure is minimized.

2.3105 Energy Supply Alert

In most instances, the Energy Agency will have anticipated a petroleum product shortfall well in advance of an actual emergency. During this interim period between the date an impending shortfall can be reasonably foreseen and the actual manifestations of a shortage, public information efforts will be undertaken to educate the citizens of the state about the impending shortfall and conservation efforts that could prevent or mitigate a crisis situation. Public awareness of the situation and perception of the seriousness of the situation will determine the effectiveness of these early conservation efforts. If Minnesotans perceive the shortage as real, compliance with voluntary conservation measures will be much greater.

Declaration of a Energy Supply Alert will forcefully bring an impending shortage to the attention of the public and heighten their awareness of the situation. Furthermore, it will encourage voluntary conservation by the public.

The Energy Supply Alert gives no State department or agency new authority. Public information tools currently available to the Energy Agency will be used to encourage conservation and educate Minnesotans of the potential petroleum fuel shortage. Therefore use of the Alert does not adversely affect any individual or group and may benefit many by averting a petroleum product shortage.

The phrase 'reasonable likelihood' was used as the indicator for declaration of an alert rather than a numerical probability. A single probability could not take into account such contributing factors as: the anticipated severity of a shortfall, the immediacy of the shortfall, and the expected duration of the shortfall. For example, a change in political power in Saudi Arabia may not affect the oil flow from this key importer, but if a disruption did occur it could result in a very severe shortage for the U.S. In this case, the Agency may need to call an alert to mobilize emergency operations and encourage conservation. Thus the phrase 'reasonable likelihood' gives the Agency the necessary flexibility to adequately respond to a variety of potential shortage situations.

The forecasts used to determine the need for an Energy Supply Alert are limited to 6 month projections. Longer forecasts are generally not accurate enough to determine a 'reasonable likelihood.' Furthermore, the longer the alert remains in effect the more difficult, both economically and psychologically, it is for citizens to continue to conserve. This rule, then, protects the citizens from overuse of declaration of an Energy Alert as a public information tool.

The Director of the Energy Agency is given the sole responsibility for the declaration of an Alert. The Director was chosen because it is a position of authority, appointed by the Governor and is

therefore accountable for his/her actions to the citizens of Minnesota. The Energy Agency was selected because it possesses the information upon which determination of a potential shortage is based.

2.3106 Energy Supply Emergency

This rule delineates the responsibilities of the Energy Agency, the Legislature and the Executive Council in the declaration of a Petroleum Supply Emergency. This rule sets out the responsibilities for an orderly analysis of the fuel situation, for declaration of the emergency situation, and for bringing the emergency declaration to the attention of the public.

2.3106 A.

Determination of a petroleum supply emergency will be based on the Agency's forecasts of supply and demand. The Agency is responsible for these forecasts because Agency staff is trained in energy issues, has developed information systems, and maintains econometric models.

The forecasts which support the declaration of an energy supply emergency must show that a significant supply imbalance will occur in the next 3 months. Longer projections can not take into account ameliorating events and are inherently less accurate. The forecasting period for an energy supply emergency is limited to 3 months rather than 6 months, as in an Alert, because an emergency declaration enables the Governor to use extraordinary measures.

The Director of the Agency is designated as the person to recommend that an energy supply emergency be declared. As in an Alert, the Director is the appropriate person because, as an appointee of the Governor, he/she is accountable to Minnesota citizens.

The criterion for declaration of an Energy Supply Emergency is simply that forecasts of demand exceed forecasts of supply, rather than a supply imbalance of a specific level or proportion. This criterion was selected, similar to the case of an Energy Alert, because other factors such as the time of year during which a shortage occurs and the expected duration of the shortfall may affect the seriousness of a shortfall.

For example, a very small forecasted shortfall of 3 to 4 percent that is projected to last 3 or 4 months may require an emergency level response. In contrast, a serious shortage lasting only a few days may require no State intervention. Rule 2.3106 A. allows the Agency to consider the many factors which affect the seriousness of a fuel shortage in determining whether an emergency should be declared.

This rule protects citizens from overuse of emergency powers by requiring that the Agency be able to demonstrate that forecasts indicate a shortage within 3 months of the declared emergency. Thus, a recommendation that an emergency be declared must be based on documentable evidence of shortage conditions.

2.3106 B.

Responsibility for declaration of an emergency, duration and renewal of the emergency declaration, and dissemination of the declaration are set out in Minnesota Statute § 116H.09, subdivision 5. The Agency has repeated these responsibilities in 2.3106 B. so that all State procedures and responsibilities regarding an energy supply emergency will be set out in one place.

We believe that this document will be more clear and useful to Minnesota citizens if it completely delineates the actions and authority relating to an energy supply emergency. The decision to include this material was based on the responses to a preliminary review of rules that did not contain this material. Respondents generally suggested this material be included or raised procedural questions relating to the declaration and duration of an energy supply emergency.

Rule 2.3107 Operating Organization for Energy Supply Emergencies

Minn. Stat. s116H.09, Subd. 5. states, in part, that; " * * * [T]he governor and the division of emergency services in consultation with the director, shall implement and enforce the emergency conservation and allocation plan and any part thereof."

The Minnesota Civil Defense Act further provides that:

> "The governor has general direction and control of emergency services and has the power and duty to carry-out the provisions of this chapter and, during the existence of a civil defense emergency declared as existing under section 12.31, or during the existence of an energy supply emergency as declared under section 116H.09, * * * , may assume direct operational control over any part of the emergency services functions within the State." Minn. Stat. s12.21, Subd. 1 (1980).

Based on the preceding statutes, Rule 2.3107 specifies that upon declaration of an energy supply emergency, the responsibility for conducting and coordinating the emergency operations of the state rests with the Governor and the Division of Emergency Services. The Governor upon the advice of the Energy Agency, will select the emergency conservation measures that the state will impose.

The Energy Agency will continue to monitor and analyze the fuel supply situation and advise the Governor on the need for emergency actions. The Agency, in determining the recommended emergency measures, will evaluate alternative courses of action that lessen, shorten, or eliminate a shortage. Rule 2.3107 B. 2. provides that the Agency shall select the "least restrictive" measures capable of eliminating the fuel shortage. This criterion requires that measures which generally rely on voluntary conservation be recommended for implementation first in the early stages of an energy supply emergency. Mandatory measures, curtailments, and driving restrictions would be considered only after voluntary or "in-place" conservation programs had been tried and exhausted and priority consumers are reporting difficulty in maintaining services due to the unavailability of fuel. "Least restrictive" measures

are those that compared with alternative actions give people the choice or option of benefiting from a conservation program. Ridesharing programs illustrate a conservation measure that provides the option of participation.

The Agency will also adminster Rules 2.3120 B. and C., the employer-based and school conservation measures. The involvement of the Energy Agency in the development of these pre-emergency programs is to provide the continuity and technical resources necessary to advance the preparation of these large consumers for energy emergencies.

Division of Emergency Services

The Division of Emergency Services will become the executive arm for impolementation and enforcement of the emergency conservation and allocation plan. Rule 2.3107 A.2. states that the Division Director shall establish an emergency operating center for conducting emergency operations under an energy supply emergency. Establishment of an emergency operting center is a standard procedure for Chapter 12 emergencies.

Rule 2.3107 C.3. requires that the Division prepare an internal operations plan for energy supply emergencies, specifically designed to implement the measures contained in these rules. This plan is necessary to designate the planning and emergency implementation responsibilities for emergency measures. For example, program details for the vehicle permit-sticker plan would be logically assigned to the Division of Driver and Vehicle Services, the agency most likely to adminster the program.

The coordination of emergency operations will be handled by the Division of Emergency Services. The power to assume direct control or assign responsiblities for emergency operations resides with the Governor. The emergency conservation and allocation plan depends upon a number of state and local agencies to perform emergency tasks. Rule 2.3107 D. refers to the statute that grants the Governor the authority to utilize state personnel and resources for emergency purposes.

The Appeals System Rules 2.3108 and 2.3109

The appeals system is an essential part of a comprehensive energy emergency conservation system. An appeals system is authorized and required by Minn. Stat. § 116H.09, Subd. 1(g) (1980) which states that [The Agency] shall: "Establish procedures for fair and equitable review of complaints and requests for special exemptions regarding emergency conservation measures or allocations."

The appeals system that has been proposed to comply with this directive consists of a system of county appeals boards (municipal boards for cities of the first class, including Duluth, Minneapolis, and St. Paul), the State Hearings Examiners, and the Director of the Minnesota Energy Agency (soon to become the Commissioner of the Department of Energy, Planning and Development). In most circumstances, the county appeals boards, referred to as Local Energy Conservation Boards, shall be the initial reviewer of appeals taken from emergency measures. In special circumstances the State Office of Administrative Hearings shall be the forum for initial review. The power to make the final determination on the outcome of all appeals to the petroleum supply emergency rules resides with the Director. (Provided that the timing provisions found under 6 MCAR § 2.3109E.3 are adhered to)

The large majority of emergency rules appeals will likely be disposed of by the Local Energy Conservation Boards or the Hearing Examiner and their recommended decisions will stand without action by the Director.

The primary purpose of placing the power of final determination in the Director is to ensure that decisions remain consistent throughout the State. If exceptions are being granted in one part of the state for individuals conducting a type of activity for which individuals in another part of the state are being denied, there arises a need to reconcile the differing interpretations of a rule to provide for its uniform and consistent application.

The following diagram displays the appeals system under the Petroleum Supply Emergency Rules.

see next page

Admin Hearings

The Office of Hearing Examiners shall hear appeals taken from the following measures:

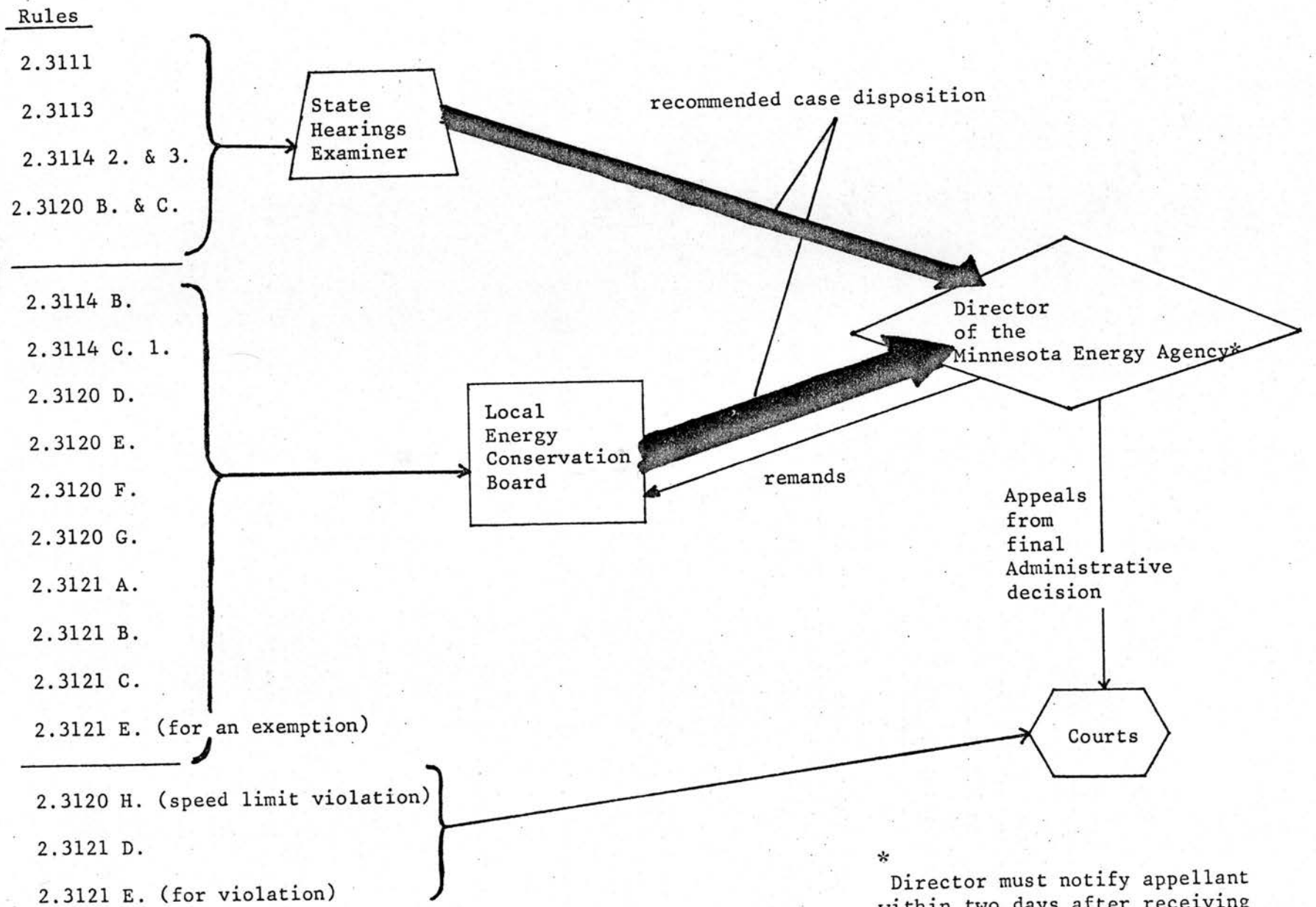
Rule 2.3111 Priority use of Fuel Oil
Rule 2.3112 Priority use of Motor Fuel
Rule 2.3113 Priority user curtailment
Rule 2.3114 C. 2. Relaxation of Environmental Standards
Rule 2.3114 C. 3. Fuel oil user curtailment
Rule 2.3120 B. Employer-based conservation plan
Rule 2.3120 C. School Conservation Plan

State Hearings Examiners were chosen to hear and decide on appeals taken from these measures due to the probable complexity of hearings, the potential that an appeal might arise before establishment of Local Energy Conservation Boards, and the likelihood that a decision adverse to the Agency's will alter the rules' application to other priority users or impair the State's power to determine and enforce the priority system which has been established.

Rules 2.3111, 2.3112, and 2.3113 rank priority consumers of fuel oil and motor fuel. Appeals under these rules may challenge the State's criteria for making priority assignments. Appeals of this nature could alter the future applicability and effect of the rules and thereby affect the relationship between other priority consumers.

Priority appeals are also likely to become complex and time consuming. Because the Local Energy Conservation Boards are obligated to hear and rule on appeals otherwise not reserved to the Office of Administrative Hearings, a time-consuming hearing in the midst of an energy emergency may cause a systems overload. A backlog of appeals defeats the essential purpose of local appeals system, which is the speedy resolution of appeals.

The Energy Supply Emergency Appeals System



* Director must notify appellant within two days after receiving a recomended decision from a Hearings Examiner or LECB to effect reversal.

Rules 2.3114 C. 2 and 3 are also to be heard by a Hearing Examiner. An Agency order to the Pollution Control Agency to promulgate temporary air quality rules (Rule 2.3114 C. 2.) necessarily involves an action with statewide consequences and potentially multiple appellants. No single Local Energy Conservation Board could appropriately deal with an appeal from this rule. Appeals from Rule 2.3114C. 3., orders to curtail fuel oil deliveries, will be closely related to the priority user assignment and for the same reasons given for priority appeals will be heard by a State Hearing Examiner.

Appeals from Rules 2.3120 B. and C. are to be heard by a Hearing Examiner because these claims may arise before the establishment of the Local Energy Conservation Boards. Appeals from these rules during an energy emergency will continue to be directed to the Office of Administrative Hearings because they too may raise issues of the general enforceability and applicability of the measure and involve a time-consuming hearing.

Rule 2.3108 Local Energy Conservation Boards

The Local Energy Conservation Boards, one per county plus Duluth, Minneapolis and St. Paul, basically comprise the first level of review for appeals in an energy emergency. The county system allows for "local control" over energy conservation measures. "Control" in the sense that exceptions and exemptions may be granted based on real need and merit and applied uniformly to all others similarly situated.

The composition of the Local Energy Conservation Boards (two elected public officials, a health professional, the county fuel coordinator, and a member of the public) is designed to afford a degree of political responsiveness and accountability yet maintain a degree of independence needed for impartiality. The Local Energy Conservation Boards are to carry out their duties and treat claims in a fair, consistent, and speedy manner.

Timing

The rules set time limits for the handling of appeals. Time periods set filing/notice deadlines, hearing deadlines, decision deadlines, and performance deadlines.

Filing/notice time limits.

Rule 2.3109 C. 10. limits the right to an appeal of emergency measures to ten working days after termination of an Energy Supply Emergency.

Rule 2.3109 E. 3. requires the Director to give notice to the appellant within two working days after receipt of the recommended decision of the Local Energy Conservation Board or Hearing Examiner of his/her intention to reverse or remand their decision.

Rule 2.3109 C. 1. states that the Local Energy Conservation Board or the Office of Administrative Hearings must set a hearing date within three working days after receipt of a written appeal and must notify all parties to the appeal of the hearing two days prior to the hearing.

Hearing time limits.

Rule 2.3109 C. 1. places a seven-working-day time limit between the receipt of an appeal and the actual conduct of a hearing. The Appellant may waive this requirement and request a hearing to be set and held at a later time.

Decision deadlines.

Rule 2.3109 E. 2. provides that the Local Energy Conservation Board or the Office of Administrative Hearings must issue a written decision including findings of fact and the recommended disposition of the appeal within two working days after the hearing on the matter has closed.

Rule 2.3109 E. 3. states that the Director must issue a written statement to the appellant setting forth the gounds for reversing a recommended decision no later than five working days after receipt of the recommended decision.

Performance time limits.

A performance deadline requires action by a person within the designated time period. The Director of the Emergency Operating Center is required under Rule 2.3121 B. 2. c. and C. 2. c. to issue exempt stickers to RV users within three days after receipt of a favorable recommendation by a Local Energy Conservation Board.

These time periods are relatively short because the imposition of measures on people will be sudden and in some cases will cause an unintended hardship.

Transportation is a basic necessity of everyday life. Restrictions imposed on travel exact a toll on mobility, affecting activities of everyday life. Similarily, interuption of the availability of fuel oil for commercial heating or power generation will cause economic hardship. Any system of appeals therefore should be as streamlined as possible to minimize those instances where the measures cause undue hardship.

The appeals system establishes an immediate post-deprivation hearing on the merits of an appeal and guarantees a resolution of that appeal in a matter of days. The entire system is an attempt to strike a balance between an appellant's urgent need for relief in some cases and the minimum time necessary for administration of a fair and impartial hearing.

2.3111 Priority Uses of Fuel Oil

The need for a priority ranking of uses arises, in part, from legislative mandate:

> Such plan shall provide a variety of strategies and staged conservation measures to reduce energy use and in the event of an energy supply emergency shall establish guidelines and criteria for allocation of fuels to priority uses. Minn. Stat. s116H.09 Subd. 1. B.1. (1980).

Uses within each category are not ranked. Under even the most severe fuel oil shortage, there would be adequate supplies to meet the needs of first priority users. If the shortage was so severe the fuel oil suppliers were not able to provide minimum operating levels of fuel oil to third priority users, the Governor would impose curtailment of fuel oil supplies according to rule 2.3114 C.3. The scheme of required allocation to priority users, and curtailment of lower priority users was chosen because the State does not have the resources to develop or operate a direct allocation system like rationing.

Rule 2.3111 B.1. The Agency defined first priority uses as those whose continued operation was necessary to maintain the health and safety of the citizens of the State. Included are services which supply basic physical needs for food, shelter, health services, and security. Telecommunication services is included as a first priority service because it will be necessary to maintain communication systems to notify Minnesotans of the status of the emergency, and of mandatory measures. Plant protection is included to minimize the damage done to the state's capital stock during an emergency. This will reduce the overall economic disruption caused by the fuel oil shortage. Finally, essential government services are included to ensure that citizens' constitutional right of due process is not violated during the shortage and to guarantee income maintenance for the poor, unemployed and elderly. The precise definitions of first priority uses are contained in rule 2.3104.

Rule2.3111 B.2 Cargo and freight hauling is a second priority use of fuel oil. Because cargo and freight hauling provides all industries with their supplies, disruption of this industry will have serious secondary economic consequences. Conversely, as other industries reduce production as a result of the shortage cargo and freight hauling will automatically decline.

Personal motor transportation is also a second priority use of motor fuel. Although use of fuel oil to meet the essential health and safety needs of citizens is higher priority, it is important for citizens, especially in rural areas, to be able to drive. Second priority status will help insure that citizens are able to commute to and from work and generally continue to conduct everday activities as usual.

Rule 2.3111 B.3. Third priority uses are all fuel oil users not included in B.1. and 2. These uses were considered not essential for the immediate health and safety of the citizens of the state. Although the loss of supply for third priority commercial consumers would certainly cause some economic disruption, the extent and magnitude of the loss would not be as substantial as the loss of cargo and freight hauling.

Rule 2.3111.4 The Agency has chosen the method set out in this rule to allocate supplies to higher priority users because it does not have the resources to develop or operate a direct governmental allocation system such as rationing. Furthermore the Agency believes that individual suppliers have the greatest capability to assess the immediacy of the needs and the priority of uses of individual consumers, and to judge the availability of local fuel oil supplies.

Fuel Oil suppliers demonstrated their ability to distribute supplies among users and provide amounts necessary to meet minimum needs during the 1976-1977 shortage. Although suppliers were not operating with a specific priority ranking of users during 1976-1977 shortage, their success in managing supplies indicates the capability to fulfill the requirements of this rule.

Rule 2.3112 Priority Uses of Motor Fuel

The priority assignment of motor fuel consumers is intended to exempt those users from demand-restraint/supply management restrictions, and provide allocations preference through preferred purchase status. The Agency recognizes these priority uses of motor fuel as necessary to protect and preserve the health and safety of the citizens of the state, or crucial to maintaining primary transportation services for the movement of people and goods.

Emergency Measures

The Governor is given sole responsibility for selecting measures used to manage supply and restrain demand during an energy supply emergency. Mandatory measures restrict the actions of firms, and individuals and so the person requiring these actions should be directly answerable to the citizens of the State. This rule also is consistent with Minnesota Statute § 116H.09 subdivision 5 which states:

> Upon declaration of an energy supply emergency by the executive council or the legislature, the governor and the division of emergency services, in consultation with the director, shall implement and enforce the emergency conservation and allocation plan.

These rules are structured to provide a set of measures in response to fuel oil shortages, and a set of measures to manage a motor fuel shortage. Fuel oil being broadly defined as No. 1, 2, 3, and 4 fuel oils and residual oil. Motor fuel includes, but is not limited to, motor gasoline, gasohol, and No. 1 and 2 diesel fuel. The exigencies of a petroleum shortage may however blur this distinction requiring actions which simultaneously reduce demand or ensure supply for both major fuel types. The rules therefore, permit the selection of fuel oil conservation measures or motor fuel conservation measures in a petroleum supply emergency.

The measures included in this rule are either intended to restrain demand or increase and manage available supplies of petroleum. The Governor may select among these measures with the advice of the Agency, as the situation demands. This gives the State a broad and flexible capability to appropriately respond to the numerous potential petroleum shortage scenarios. This structure is intended to fulfill the requirements of Minn. Stat. § 116H.09, subdivision 1 which states:

> The plan shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and allow a choice of appropriate responses.

Given this structure, the Agency has attempted to include all reasonable actions that might relieve a shortfall situation. An action was considered reasonable if it met three basic criteria: 1) Demand restraint measures would yield substantial fuel savings; or supply management measures would substantially ease the disruption resulting from the shortage; 2) The measures would be efficient, acting to minimize the economic disruption resulting from the shortage and allowing normal market mechanisms to work when ever possible; 3) The measures should be equitable, and avoid placing undue burden on any single group or individual.

The following measures will be discussed within the framework of these criteria.

Fuel Oil Emergency Measures

Rule 2.3114 A. Voluntary conservation, encouraged and taught through state education and information outreach are reasonable because they allow the individual consumer of fuel oil the choice of selecting from among a number of conservation measures.

Rule 2.3114 A.1. Reduction of thermostat settings has the largest potential for fuel oil savings of any single demand restraint measure short of curtailment of fuel oil supplies to industry. The Energy Agency estimates that the average residential thermostat is set at 68°F. Thus, if theremostats are requested to be lowered to 65°F, this will be a reduction of 3°. A 3° reduction in thermostats will yield an approximate nine percent savings in fuel oil. The Minnesota Energy Agency estimates that 10.0 million barrels of fuel oil were used in 1980 for residential space heating, nearly 40 percent of total fuel oil consumption, and 40 percent of that was used during the months of January and February. Nine percent of this is approximately 360,000 barrels. If approximately ten percent of homes are exempted from this measure for health reasons (i.e. the elderly) and another ten percent decline to comply with the measure, the savings is reduced to 290,000 barrels. This savings is two and one quarter percent of the fuel oil used during the months of January and February. This is a very significant saving, causing no economic disruption with all residential consumers equally sharing the sacrifice.

During the public comment period several people expressed concern that the elderly and sick would suffer from this action. In order to prevent potential hypothermia problems, the Emergency Operating Center will specifically warn the elderly, sick, and families with children under the age of one not to participate in this measure. These groups were selected upon the advice of the Minnesota Department of Health.

The Governor may also request that residential waterheater thermostats be set back to between 105° and 115° or the lowest possible setting. This would represent a 10° to 20° reduction from the current assumed settings of 120° to 140°. The expected savings from an average 15° thermostat setback will yield an estimated seven and a half percent energy savings according to "Electric Price Statistics" published by the Department of Energy. An estimated 2,309,000 barrels of fuel oil was used to generate electricity in 1978 and approximately 16 percent of electricity goes to water heating, or 369,000 barrels. We further assume 40 percent of this occurs during the months of Janaury and February or 147,791 barrels. The 7.5 percent savings from reduced themostat settings would yield 9,980 barrels of fuel oil, assuming 90 percent participation. This is approximately .2 percent of the fuel oil used in January and February.

In addition to this saving, temperature reductions on gas water heaters will provide natural gas for customers who now have their natural gas supply interrupted and burn residual oil for part of the winter. A 15° setback in thermostat settings will result in approximately 7

pecent natural gas savings, according to a study by the Oak Ridge National Laboratory (ORNL), "Residential Water Heaters: Energy and Cost Analysis." Estimating that 17 percent of natural gas consumption is for water heaters, this measure may reduce natural gas consumption by 211 million cubic feet. If all of this was used by commercial customers who would use fuel oil when interrupted from natural gas this would save 36,320 barrels of fuel oil, assuming a 90 percent compliance rate, or .6 percent of the fuel consumed during that period (based on 1978 estimates).

In total, reduction of thermostat settings by 15° would save an estimated .8 percent of the fuel oil consumed in January and February. Similar to space heating thermostat setbacks, this measure causes no economic disruption and equally burdens all groups.

Rule 2.3114 A.2. Rather than implementing specific measures the govenor may establish voluntary conservation targets for various industrial, and governmental groups, and residential targets. These targets could be reached in any way the consumer chose: reduction of thermostats, increased insulation, use of alternative heating, reduction of truck travel, etc. The Emergency Operating Center would then monitor fuel consumption to determine the effectiveness of their efforts. Thus, this measure gives consuming groups the most flexibility in reducing consumption and, so, should cause the least personal and economic hardships.

Electricity and natural gas will be included in these measures for the reasons discussed in the analysis of the water heater thermostat reductions. Electricity is frequently generated with petroleum products during peak periods. Thus, reduction of peak electricity use will save fuel oil. Saved natural gas may be used by interrupted commerical customers whose alternative fuel is fuel oil. Thus, in periods of fuel oil shortages it is important to conserve all major energy sources.

Rule 2.3114 A.3. This measure might include such strategies as a compressed work week, closing of recreational facilities, and weekend or evening closings of businesses. The objective of this measure is to cut energy consumption in commerical buildings by reducing the periods of occupancy.

Industrial and commercial use (except transportation) of fuel oil represents approximately 17.3 percent of fuel oil consumption in Minnesota. During the month of January and February this is approximately 2,200,000 barrels. DOE estimates that as much as 33.3 percent of this is used in provision of essential services such as hospitals, sanitation services, etc. This reduces the potential pool of fuel oil to about 2,000,000 barrels. We assume that unoccupied hours may be increased by 6 percent (or by eight hours in an average work week), from 64 percent to 70 percent of the time. Assuming a 10° thermostat setback during unoccupied times, this measure could result in 1.5 percent decrease in commercial fuel oil consumption. This is a savings of 30,000 barrels or .2 percent of fuel oil consumed in January and February.

This measure may cause some minimal economic disruption. Because it is voluntarily undertaken, however, we assume that it will be less than the economic disruption resulting from the shortage of fuel oil. Furthermore, because it is voluntary it will not place undue burden on any single group.

Rule 2.3114 A.4. If it is determined that a fuel oil shortage will last only a relatively short period of time, release of fuel oil from large inventories may provide necessary supplies to ease shortage conditions. Results from a 1979 survey indicate that 26 percent of users have storage capacity over 50,000 gallons.

Average consumption for the period January and February is 52,000 gallons per week for this group. Thus, approximately 25 percent of commercial users have fuel oil that might be released for consumption.

These inventory releases would be compensated in a manner similar to any private sector transaction. The firm releasing the fuel oil would arrange with the fuel oil jobber to be paid the market value of the fuel oil released, or reimbursed in fuel oil when supplies of fuel oil become available.

This rule also specifies the way in which released fuel oil will be used during the emergency. This is specified to ensure that it is allocated to the priority uses set forth in the emergency rules. These procedures will, in effect, cause released fuel oil to be distributed like state-set-aside, through the Fuel Allocation Rules of Procedure. The state has had six years of experience in use of this or similar procedures to manage shortage situations.

Rule 2.3114 A.5. Business, industrial and government use represents 56.7 percent of fuel oil consumption or approximately 18,000,000 million barrels during January and February. If even 1 percent of this consumption could be saved by closing buildings and heating them at levels to maintain minimal plant safety, 180,000 barrels could be saved. Buildings that potentially could be closed include warehouses, garages, and unoccupied buildings.

As with all voluntary measures the personal and economic disruption is minimized using this measure. Each consumer determines the appropriate level of sacifice for their individual situation.

Rule 2.3114 A.6. Public information efforts will be conducted to educate Minnesotans about methods to conserve fuel, and inform citizens about the severity of the shortage. Informing citizens of the dimensions of the shortage will raise citizens' awareness of the shortage. This measure is intended to gain Minnesotans' commitment to voluntary efforts to reduce fuel consumption. Education efforts will then instruct citizens in ways to achieve this fuel consumption.

The fuel savings gained from this measure are difficult to calculate. If use of this measure, however, increases compliance with voluntary measures by 5 percent, the savings would be significant.

As with the other voluntary measures, use of public information efforts will only burden people to the extent they personally determine justifiable. This measure should cause no economic disruption. It will, however, require communication services to provide broadcast time and newspaper space for these information efforts.

Mandatory Measures

Mandatory measures will be implemented in the event that voluntary efforts do not or apparently will not reduce the shortage or are not appropriate for use at this stage. Voluntary conservation is the key to this plan and measures that restrict the behavior of Minnesota residents will be used cautiously. As a result, mandatory measures are broken up into two groups. Mandatory measures contained in rule 2.3114 B. are considered less obtrusive and result in little or no economic or environmental disruption. In contrast, the mandatory measures included in 2.3114 C. are more severe and will only be selected after the measures in 2.3114 B. have failed or will fail to alleviate the situation.

Rule 2.3114 B.1. Reduction of thermostat settings to save natural gas and fuel oil is the single most important demand restraint measure included in the fuel oil plan.

The Emergency Building Temperature Restrictions (EBTR) set maximum heating and cooling temperature for all buildings. They require that thermostats for space heating not be raised above 65°F during occupied periods of the day and 55°F during unoccupied periods of the day. Hot water heater temperatures must be set at 105°F according to the EBTR.

Although the Federal Emergency Building Temperature Restrictions regulations are no longer in effect, the 1979 regulations are cited to as the stamdards required under this rule. These standards have been tested through actual implementation, and are familiar both to state enforcement officials and to building owners and operators.

These regulations exempt residential buildings, hotels, hospitals and health care facilities, elementary schools, nursery schools and day care centers. Additional exemptions are extended as follows:

(1) Where a "manufacturer's warranty", service manual or equipment service contract requires specific temperature levels to prevent damage to special equipment.

(2) Where maintenance of certain temperature and humidity levels is critical to materials and equipment used in manufacturing, industrial or commerical processes.

(3) Where maintenance of certain temperature and humidity levels is required for the proper storage or handling of food or other agricultural commodities, raw materials, goods in process and finished goods.

(4) Any other circumstances where special environmental conditions are required to protect plant, life, or are essential to the operation of a business.

(5) Where maintenance of certain temperature levels is required for health reasons.

(6) Where the structure or insulation of the building will be damaged.

(7) Where nutritional, recreational, and other facilities are specifically designated for use by senior citizens, the thermostat may be adjusted to raise the dry-bulb temperature to 70 degrees F. during the heating season.

The complete Emergency Building Temperature Restrictions are attached in Appendix B. It is estimated that this measure will save 2

percent of the fuel oil consumed during January and February, or nearly 200,000 barrels, assuming a 90 percent compliance rate and a 3° thermostat reduction.

This measure yields substantial fuel oil savings and does not disrupt economic activity or limit personal activity in anyway.

Rule 2.3114 B.2. Most heating, ventilating and air cooling systems in commercial buildings in Minnesota are required by the State building code to conform to ASHRAE 62-73. This ASHRAE standard varies by type of building use but generally requires intake of 25 cubic feet per minute (CFM) of outside air per person. A lesser level is allowed in areas where smoking is prohibited. This mandatory conservation measure restricts intake levels to five CFM per person. In order to control odors and air quality, smoking would be prohibited in buildings which conform to the reduced ventilation levels. During the hours in which a building is closed (unoccupied), intake of outside air would be prohibited.

A study of three Minnesota industrial operations was conducted for MEA by FluiDyne corporation in 1978. This study estimated that a reduction of 10 to 23 percent in energy use for space heating was possible by decreasing outside air intake for ventilation through a variety of steps.

Based on these studies, we believe that this measure is likely to produce sufficient savings to justify its use during an emergency. For planning purposes, such savings should be estimated at approximately ten percent of fuel used for commerical space heating over the entire heating season. This represents 550,000 barrels or 1.7 percent of fuel oil consumption that might be saved from this measure.

Certainly, this measure would prove burdensome to tobacco smokers However, the significant savings that would be achieved without environmental or economic side effects, justifies the use of this measure during an emergency.

Rule 2.3114 B.3. Electric utilities with oil-fired generating facilities used 1,055,500 barrels of middle distillates and 1,253,500 barrels of residual oil in electricity generation during 1979. The proportion of these petroleum products used during winter heating months could be used for home and commercial heating during a fuel oil shortage. According to the DOE publication "Cost and Quality of Fuel for Electric Utilities" approximately 40 percent of fuel oil burned is used during the winter heating months of December through February. Thus, of the 1 million barrels of middle distillate burned, 400,000 barrels are used during these winter months. If 20 percent of this is burned indirectly through purchase from the Mid-Continent Area Power Pool, nearly 338,000 barrels of fuel oil is conserved that might be used for home heating or a saving of 1 percent.

If residual oil was in short supply, utilities could be asked to refrain from burning this oil. Of the 1,250,000 barrels of residual oil burned, approximately 400,000 could be freed-up during the months of December through February, or another 1 percent fuel oil savings.

This measure does require exceptional sacrifice on the part of electric utility companies. Electricity that is purchased from the power pool will usually be more expensive than self-generated power. However, this measure frees-up, two percent of the state's annual fuel oil use

Rule 2.3114 B. 4. In a 1979 survey of fuel oil users, the Minnesota Energy Agency found that the commercial and industrial users that were surveyed used, on average, about 1,000,000 gallons of middle distillates a year. This is approximately 52,000 gallons per week during the winter heating months of January and February. Twenty-five percent of the users surveyed had storage capacity larger than this weekly consumption, up to a capacity of 5,000,000 gallons. The average storage capacity was over 260,000 gallons according to this survey.

This indicates a great capability, in the state, for industrial and commercial users to operate from their own fuel oil supplies during a shortage. Thus, by not delivering supplies to users with large storage capacity the fuel oil is made available to other users. Although this measure does restrain demand or increase total supplies, during a shortage lasting only a few weeks or a month, such a measure could ease shortage conditions.

This measure should not cause significant disruption for users who are required to draw on their storage supplies. The measure specifies that the jobbers will provide supplies when the user has less than one week's supply remaining. Furthermore, it does not require the commercial or industrial user to release any inventories, rather it requires that these users consume their existing supplies.

Rule 2.3114 B.5. In most cases the Agency anticipates that home heating oil, referred to as middle distillate, will be the fuel oil product in short supply. Lower grade fuels such as residual oils are anticipated to be in adequate supply in all but the most severe petroleum disruption. As a result, groups of users such as natural gas and propane consumers who are ordered to burn residual oil, will be freeing-up other home heating fuels. The MEA knows that there are many schools and hospitals in the state with the capacity to burn residual oil who are now burning middle distillate. Taking this into account, this measure could result in a significant amount of middle distillate being made available for residential and other first priority users.

The clause specifying that the PCA may exempt individual consumers from this measure was included to protect the environment. Residual oil has more air pollutants that natural gas or middle distillate. Thus, burning residual oil may violate environmental standards. If PCA indentifies such a case it may order that the user be exempted from this measure.

In most cases, switching to residual oil from middle distillate will not cause severe economic hardship. Although more costly for storage and maintenance, the residual oil itself is substantially less expensive than middle distillates.

Propane and natural gas users may in some circumstances find that switching to residual oil an economic burden. MEA staff in determining "the least restrictive" measures necessary to eliminate a fuel shortage will weigh the economic costs against the severity of the shortage.

Rule 2.3114 C. If the measures of 2.3114 B. do not ameliorate the shortage, or if the Agency determines that these measures will not be adequate to manage a fuel oil situation, this rule proposes a set of very severe actions that may be taken. These measures are separated from the previous measures and require additional documentation of need, because of their very severe nature. They are included, however, because in the event that a shortfall of greater than 15 percent or one of sustained duration occurs, the previously described actions will probably not be adequate to control the situation.

Rule 2.3114 C.1. Buildings not required by Minnesota Statutes to maintain a minimum temperature of 65°F while occupied will be required to lower thermostats, by approximately 3° to 62°F. Approximately 80 percent of worksites are covered by Minnesota Rules MOSHC 41f. Furthermore, all buildings would be required to lower thermostats to 50°F during unoccupied periods. Assuming 10% of buildings will be exempted from participation and a 90% compliance rate for the evening temperature reductions, this measure would reduce overall commercial fuel oil use by 6.8 percent or 376,176 barrels. This represents 1 percent of total fuel oil consumption.

This measure, however, poses a potential health hazard. Temperatures below 65°F can cause hypothermia if individuals do not dress warmly. In addition, there is evidence that productivity drops at temperatures below 65°F. As a result, this measure may cause some economic disruption and personal discomfort..

Temperature reductions at this stage of a fuel oil shortage are made necessary because some areas of the state may not have adequate supplies to maintain even minimal and safe building temperatures and normal economic activity has been interrupted for some time. In light of these kinds of situations, additional thermostat reduction becomes a reasonable request.

Rule 2.3114 C.2. Certain environmental standards may be relaxed where fuel oil savings result. For example, the temporary relaxation of sulfur dioxide emissions standards for users of residual oil would generate additional distillate supply by permitting refineries to blend less distillate stock with residual quantities. The "blending" or "cutting" of residual fuels with higher grade distillate stocks serve to reduce the average sulfur content of the residual oil. The cutting is necessary to market residual oil in areas where the maximum allowable emissions of sulfur dioxide for liquid fuels is 1.6 lbs. per million BTU. By permitting refineries to market higher sulfur content residual oil and relaxing the sulfur standard for large stationary source users of this residual oil, distillate stocks become "freed-up" for high priority distillate users.

The responsibility and authority to protect Minnesota's air resources is vested with the Minnesota Pollution Control Agency. Any suspension or relaxation of air standards must be approved by the Air Pollution Control Board and in instances where State Implementation Plan (SIP) provisions are subject to temporary suspension, the Environmental Protection Agency must also approve the proposed measure.

Refinery managers indicated several constraints in maximizing distillate output at the expense of the quality of residual fuels.

The type of crude oil refined determines to a large degree the quantities of lighter fuels (gasoline, jet fuels), heavier fuels (bunker oil, residual), and middle distillates (diesel fuel and home and commercial heating fuel), comprising the product yield.

Crude oils also vary in their latent sulfur content. The type of crude used as input determines to a large extent the sulfur content of the bottom of barrel distillates, typically residual oil. It then becomes necessary to "blend" lower sulfur residuals in order to produce a residual oil with a permissible sulfur content.

To the extent this "blending" is performed to lower the sulfur content of the residual oil to enable the refinery to market the product in areas with more stringent emissions limitations (2.0 lbs. per million BTU), a relaxation of such standards permits increased yield of middle distillates.

An estimate of the resulting savings is approximated 1000 barrels a day (b/d) of No. 2 home heating oil. A production of 1000 b/d is approximately .7% of the average daily consumption of diesel fuel during the heating season (October - April). On a percentage basis this estimate of product yield seems small, however, the adoption of this measure would probably only occur in the final phases of a fuel oil emergency. In the severe case scenario during which this measure is adopted, it is likely that fuel for homes would be in short supply. The 1000 b/d is sufficient fuel to heat 8400 single family dwellings during a winter fuel oil shortage.

This measure adversely affects the air quality in an area where a substantial number of point sources are permitted to burn higher sulfur content residual oils. The consequences of air pollution are well known and documented. Polluted air poses a chronic health threat for all people.

Despite this, the immediate health and safety of our citizens during a severe fuel oil emergency will be better served by providing fuel for heating homes during the heating season as compared to the marginal increase in sulfur dixoide emissions during the declared emergency. PCA estimates taken from area ambient air quality models based on the 1000 b/d increase in quantity of greater than 2% sulfur fuels moreover, indicate no deleterious effect on ambient air quality.

The Minnesota Energy Agency will request the PCA to explore the fuel oil savings that might result from relaxing other environmental standards and developing procedures for effecting these changes during a fuel oil emergency. In this way, both the environmental damage and the fuel oil savings will be evaluated prior to an emergency situation.

Rule 2.3114 C.3. In most severe fuel oil shortages this rule gives the State the power to curtail delivery of fuel oil supplies to specific industries. Using this method fuel oil supplies would be freed-up so that first and second priority users may receive adequate supplies. Some economic disruption from industry curtailment is imminent. However, the orderly termination of fuel oil supplies will minimize the economic and social disruption incident to severe energy shortages and is much prefered over the random effect of an unmanaged emergency.

This rule specifies that fuel oil suppliers and firms in the affected industry will be notified by registered mail. This assures that fuel oil suppliers and firms have the necessary information to comply

with the measure. In addition, such notification will allow firms to begin appeal of the order, if they so choose, as soon as possible.

The criterion to determine the order of curtailment is the minimization of employment layoffs and the maximization of fuel oil . The indicator for the order of curtailment, (Rule 2.3111 C.3.a.), is the ratio of an industry's consumption (in BTU's) of fuel oil and natural gas per employee per year. Industries with relatively small workforces as compared to energy consumption will be the first to have supplies curtailed.

The indicator is based on both natural gas and fuel oil consumption because many industrial and commerical users use natural gas on an interruptible basis. When interrupted from natural gas supplies, these consumers use fuel oil. Thus consumption of fuel oil alone does not reflect their true energy intensity. If an industry with a very high energy-labor ratio had been interrupted from natural gas and was using fuel oil, that industry would have its fuel oil curtailed in the appropriate order. If the industry was still using natural gas, then it would not be disrupted by having fuel oil supplies curtailed. The ranking of industrial groups by Energy Agency estimates of energy-labor ratios are as follows:

Natural Gas & Fuel Oil (10^6 BTUs)
Per Employee

1976 (Actual)		1980 (Estimate)	
*Petrol Refining	(17,672)	*Petrol Refining	(17,690)
Iron Mining, Ferrous	(3,048)	Iron Mining, Ferrous	(1,640)
Pulp, Paper	(1,194.4)	*Electric Utilities	(1,127)
*Electric Utility	(1,148.29)	Pulp, paper	(1,094.7
*Trucking	(1,141.6)	*Trucking	(962.8
*Other Utilities	(898)	*Other Utilities	(956.3
Primary Metal	(775.13)	Primary Metal	(691.6
Lumber, Furniture	(594.59)	Lumber, Furniture	(624.6
Chemicals, etc.	(480.13)	Chemicals, etc.	(494.2
Railroad	(463.42)	*Food Kindred	(476.5
Stone, Clay, Gl	(455.5)	Stone, Clay, Gl	(472)
*Gas Utilities	(425.4)	*Gas Utilities	(467.8)
*Food Kindred	(404.11)	Railroad	(384.2
Non Ferrous Mining	(240.6)	Non-Ferrous Mining	(257.9)
Other, Quarry	(239)	Other, Quarry	(230.6
Other, Services	(218.93)	Other, Services	(214.0
*State/Loc. Gov.	(187.54)	*State/Loc. Gov.	(186.5
Other Trans.	(173.71)	Fed. Government	(150.8
*Medical, Ed.	(158.44)	Other Trans	(144.6
Fabric·Metal	(154.93)	Fabric·Metal	(142.1
Fed. Government	(147.37)	Electrical	(112.8
Electrical	(122.52)	*Medical, Ed.	(107.0
Finance (F.I.R.E.)	(110.18)	Finance (F.I.R.E.)	(102.7
Machinery	(75.61)	Hotels, Personal Services	(65.0
Hotels, Personal	(69.33)	*Livestock	(60.8
*Print, Publishing	(61.69)	Machinery	(58.5
*Livestock	(60.35)	*Print, Publishing	(57.4
Retail	(50.53)	Retail	(49.8
Business Services	(49.52)	Wholesale	(48.4
Wholesale	(48.91)	Business Services	(48.3
Other MFG	(27.45)	Other MFG	(26.7
Construction	(5.95)	Construction	(5.7

*Some or all of the firms in this industry are first or second priority users.

Rule 2.3114 C.3.b. First priority users of fuel oil are necessary for the continued health and safety of the citizens of the state. Curtailment of these groups would contravene the fundamental purpose of energy emergency preparedness: to minimize the personal and social disruption resulting from a fuel oil shortage. Thus, first priority users will be last to be curtailed.

Similarly, second priority users of fuel oil are considered to be necessary for the health and safety of the citizens of the state or critical to minimizing economic disruption resulting from the shortage. This group will be curtailed from fuel oil supplies only after third priority users have been curtailed.

Rule 2.3114 C.3.c. An exemption from curtailment of fuel oil deliveries is provided for firms who have demonstrated significant conservation efforts. This exemption is granted, in part, to satisfy Minn. Stat. §116H.09 Subd. 1. which states:

> The plan ... shall: (a) Give priority to individuals, institutions, agriculture and businesses which demonstrate they have engaged in energy saving measures ...

Moveover, the Agency wishes to encourage energy conservation. If Minnesota is successful in reducing its energy consumption, the chances of a fuel oil disruption are greatly reduced. We hope this measure will encourage firms to take fuel oil saving actions before an energy emergency arises.

Rule 2.3114 C.3.d. During the public comment period the Agency received several suggestions that an individual firm's energy-labor ratio should somehow include consideration of the number of degree-days in its area. Firms in the northern part of the state would have difficulty proving that their fuel consumption per employee was lower than the industry average, not because of any lack of conservation effort, but rather because it is colder in those areas.

Thus, this rule requires that firms divide their energy-labor ratio by the ratio of local degree days to statewide degree days. For example, if a firm in Hibbing estimated its energy labor ratio as $1,200 \times 10^6$, it would divide this number by $\frac{\text{Hibbing degree days}}{\text{statewide degree days}}$ or 9,600/840 or 1.143. This would reduce the firm's energy labor ratio to $1,050 \times 10^6$.

Similarly this rule removes any advantage firms in the southern part of the state might have had. This rules allows all firms in an

industry equal opportunity to successfully appeal an order to curtail fuel oil deliveries based on conservation efforts.

Rule 2.3114 C.3.e. The Agency will publish its estimates of energy-labor ratios so that an industry-wide effort to reduce the ratio may be conducted or the Agency's estimates may be contested. In addition, this information will give individual firms a target for conservation efforts. The ratios will be published annually because the ratios and the rank order of curtailment will change as industries conserve, or develop alternative fuel sources, etc. The energy-labor ratios will be published in October so that industries will be put on notice before the peak heating months of December through February, the period during which the state is most susceptible to fuel oil shortages.

Rule 2.3114 C.4. In the event that there are not adequate fuel oil supplies available to continue to heat residences, the State will request that citizens move in with friends or relatives or into emergency shelters. This measure will be undertaken to prevent death or illness from hypothermia and will only be done with the voluntary participation of the citizens of the state.

The Emergency Operating Center, using its traditional sources such as the Red Cross, local law enforcement officals, and the National Guard, will provide evacuation assistance. This assistance will include designation of and transportation of citizens to emergency shelters so that the process it orderly and does not result in panic. These groups will also provide assistance and information about closing homes in order to minimize the damage done from inclement weather.

This is clearly a measure that will cause extensive personal and social disruption. It will be done only to maintain the health of the citizens of the state. It must be evident to the Agency, that in a shortage of such serious proportions, actions to secure heated places for temporary residences will be desired by the citizens of the state. This measure would be necessary to prevent death or illness from hypothermia.

Rule 2.3120 Motor Fuel Emergency Measures

The following measure descriptions are intended to support and prove the need for and reasonableness of the measures described. The demand reduction measures presented and analyzed in this section are:

Rule 2.3120 A. Public Information/Voluntary Conservation

Rule 2.3120 B. Employer-Based Conservation Measure

Rule 2.3120 C. School Conservation Program

Rule 2.3120 H.
& Rule 2.3121 D. Speed Limit Measures

Rule 2.3120 D. Odd-Even Purchase Restriction

Rule 2.3121 A. Vehicle Permit-Sticker Plan

Rule 2.3121 B.
& Rule 2.3121 C. Recreational Vehicle Bans

Rule 2.3121 E. Driving Ban

The following supply management measures are also treated in this section:

Rule 2.3120 E. Minimum Purchase Requirement

Rule 2.3120 F. The Flag System

Rule 2.3120 G. Motor Fuel Availability Measure

Rule 2.3120 A. Public Information/Voluntary Conservation

Description of Measure

Minnesota's gasoline emergency plan relies heavily on the public's voluntary efforts to reduce gasoline consumption. Immediately prior to an emergency the state will step up efforts to educate citizens about simple measures that will yield substantial gasoline savings and about the impending shortage. In the past, citizens have responded conscientiously to state requests for cooperation during energy shortages. We anticipate a similar response in future shortages.

Energy saving measures that will be promoted are improved vehicle maintenance (primarily tune-ups and oil changes), improved driving habits such as smooth acceleration, engine breaking-in and speed reduction, reduced use of air conditioning, and reduced discretionary driving.

The purpose of this measure is to conserve motor fuel by providing for the widest practical dissemination of information on a regular and continuing basis to consumers about no or low-cost conservation actions. This plan relies heavily, especially in the early stages of an energy supply emergency, on the public's voluntary efforts in reducing motor fuel consumption. Direct appeals to the motoring public to conserve fuel have resulted in substantial energy savings.

Energy Savings

The energy savings resulting from voluntary conservation activity are difficult to predict. The public's perception of the seriousness of the shortage, the cause of the shortage, and the government's or industry's ability to manage and allocate supply during a shortage is the key to voluntary conservation. Furthermore, actual savings resulting from any one conservation action performed by the public is not clearly identifiable from among the number of conservation options available to individuals.

MIT analysis suggests that as little as .5% reduction in consumption can be gained from public information/education measures. The MEA believes voluntary conservation in response to public information and education to be significantly greater during an energy emergency.

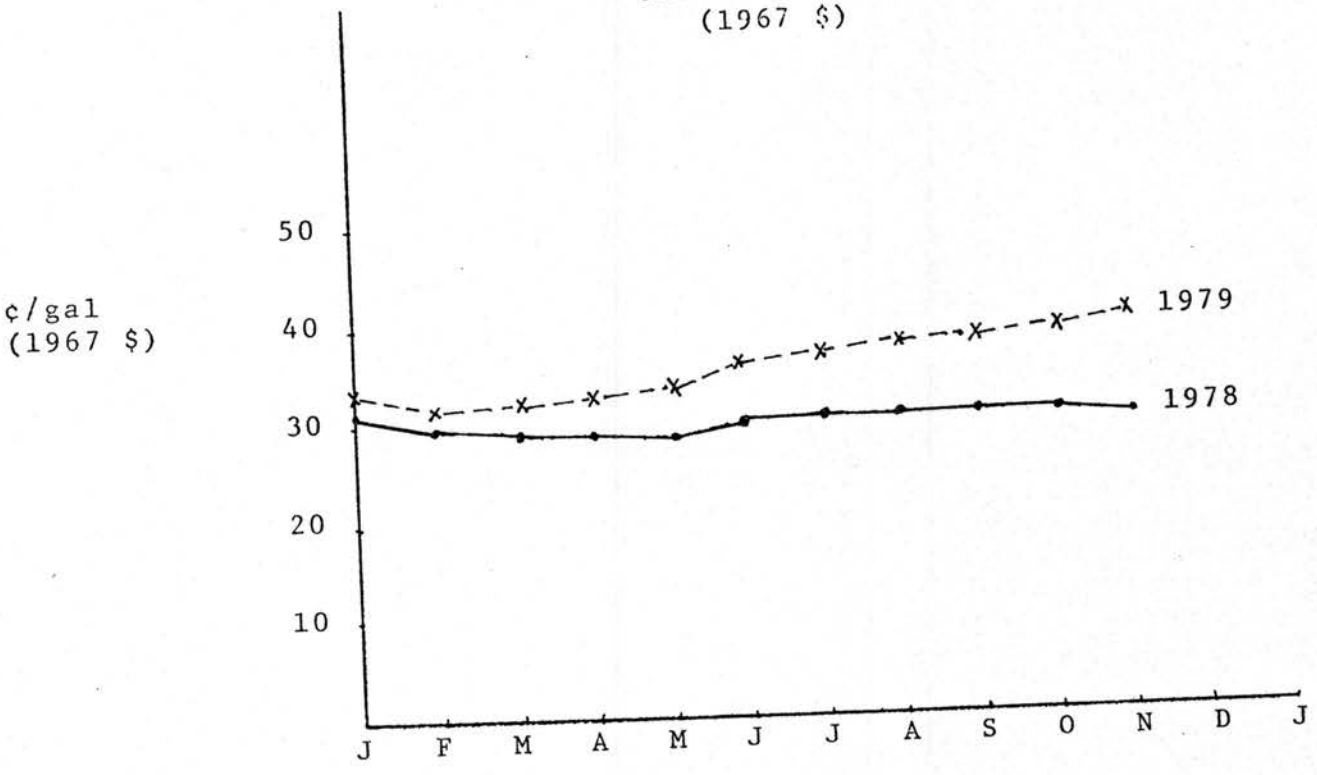
The 1979 gasoline shortage in Minnesota provided empirical proof that voluntary conservation results in substantial savings. Gasoline consumption in Minnesota had increased at an annual rate of 3.4% between 1976 and 1978, primarily due to increases in vehicle miles traveled and stable real prices of gasoline. Rising incomes and stable gasoline prices induced a 3.7% annual growth in total vehicle miles, yielding an annual growth of 3.4% in the consumption of gasoline (slightly less than the growth of vehicle miles traveled (VMT) due to the rising fuel efficiency of new cars).

In 1979, gasoline prices rose rapidly (see Figure III-1) which, combined with spot supply shortages, casued a reduction in VMT and gasoline consumption compared to 1978. Had it not been for rapid price increases and product shortages, consumption would have been expected to increase at least 3% in 1979. Instead, actual consumption dropped to 2,213 million gallons, a reduction of 4.4% from 1978 and a 7.2 downturn from the projected 2,384 million gallons for 1979.

Figures 2 and 3 show the dramatic reductions in VMT and gasoline sales beginning in June of 1979. Product supplies were tight and prices were already 30% higher than the same month in 1978. Between June and October of 1979, consumption dropped 8% compared to the same period in 1978. This is equivalent to an 11% drop from trended consumption for 1979. An estimated price elasticity of -.22 would predict that a 36% real price increase would result in a 8% reduction from projected consumption.

FIGURE III - 1

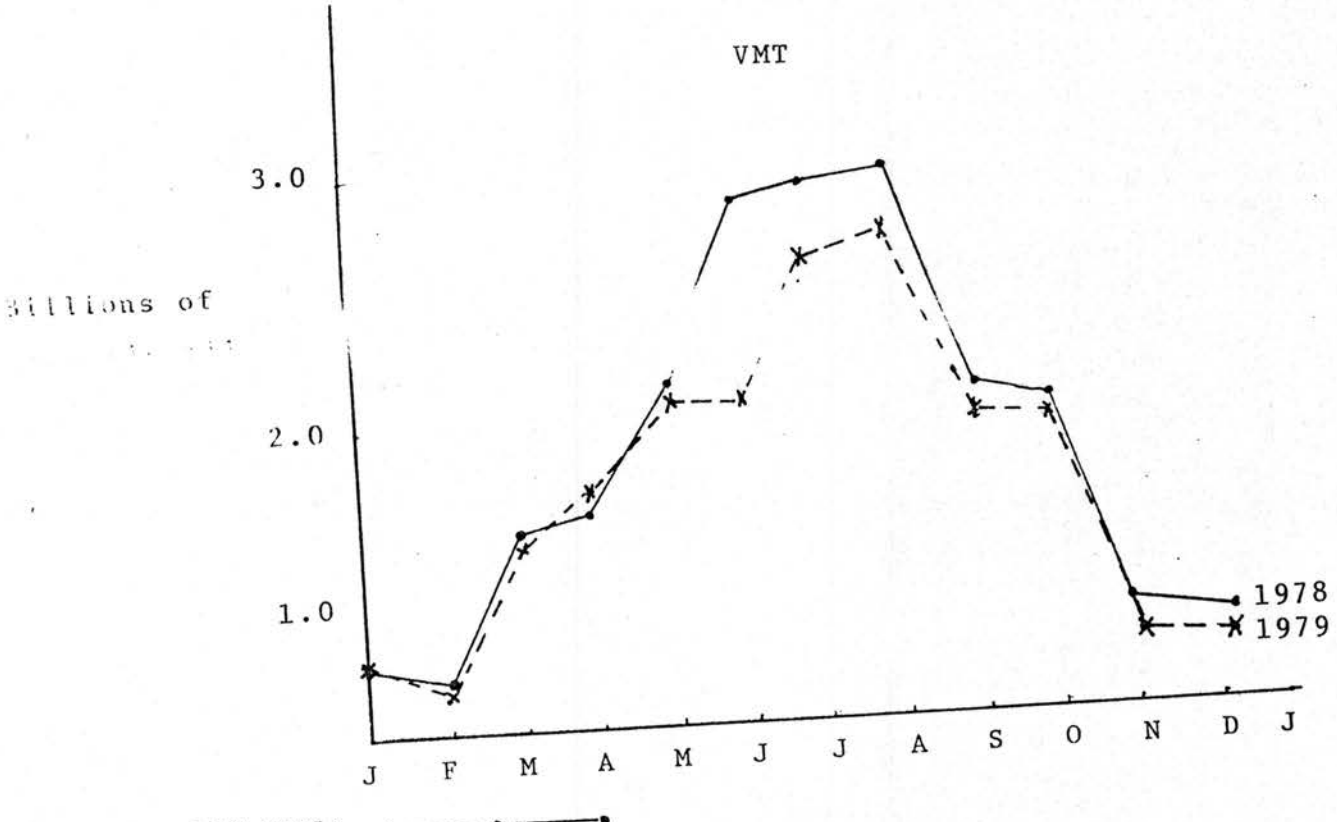
GASOLINE PRICES
(1967 $)



1978 Gasoline Prices: o—o—o—o

1979 Gasoline Prices: x- - -x- - -x- - -x

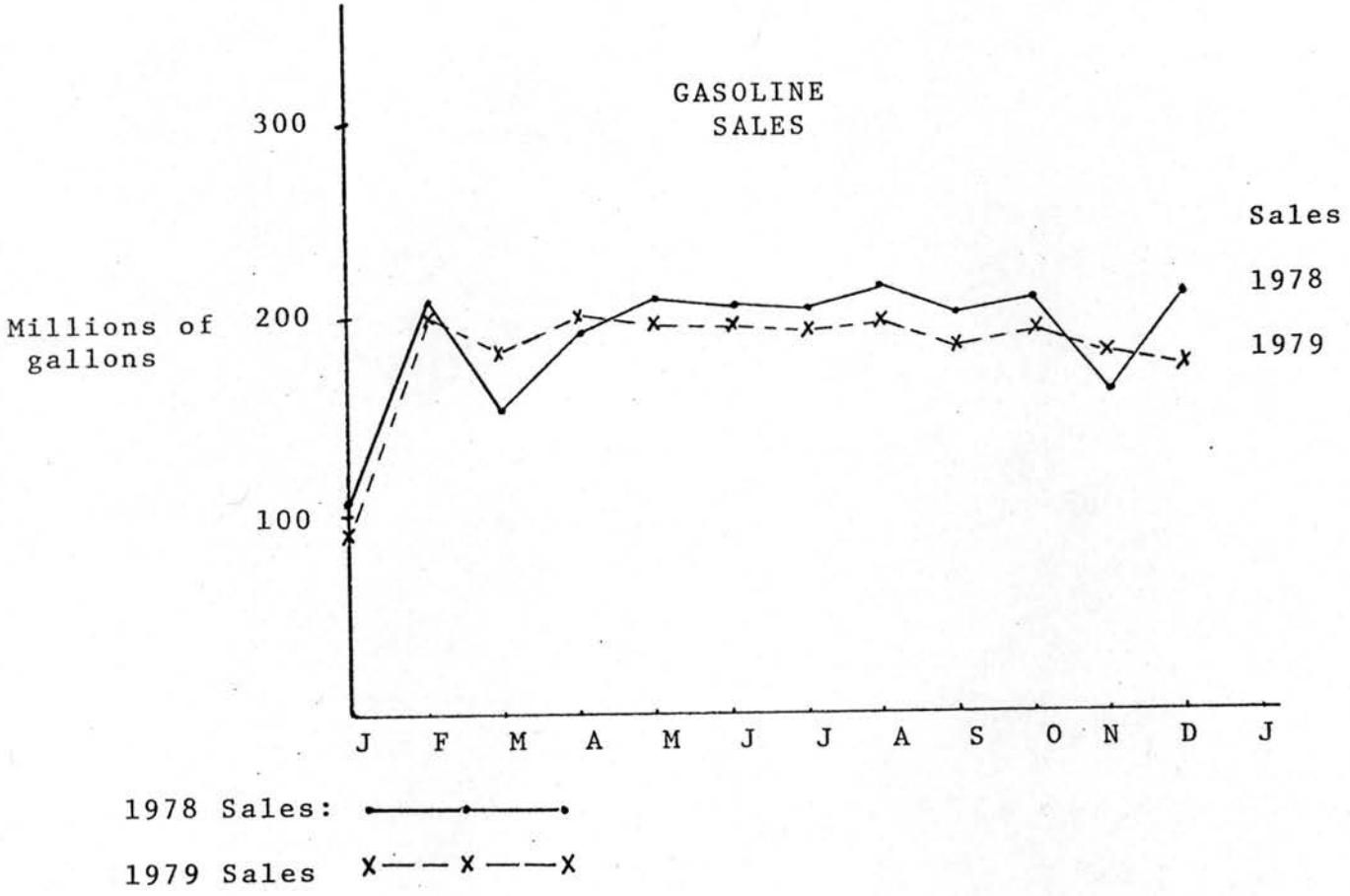
FIGURE III - 2



1978 VMT: ——•——•

1979 VMT: x— —x— —x

FIGURE III -3



The 11% actual decrease in consumption, less the estimated price effect of 8%, yields a 3% decline in consumption that is attributable to voluntary conservation. Assuming a slower growth in consumption resulting from higher mpg in new cars, the savings due to voluntary actions may be lower, perhaps in the order of 2.5%.

The 1979 gasoline shortage was an episode where Minnesotans, presumably with the educational assistance of the State, voluntarily reduced consumption beyond that expected from the price increase.

We believe that future emergencies will yield similar savings of between 2.5 - 3% from voluntary efforts to conserve.

Employer-based Conservation Measure

Rule 2.3120 B. is intended to induce large employers, colleges, universities and trade schools, and local and state governments to plan and prepare for motor fuel shortages.

The employer-based conservation measure is an attempt to tap the energy conservation potential of a large consuming sector through delegation of planning responsibilities to large private employers, colleges and local governments.

The persons subject to these rules are encouraged to institute conservation programs prior to an emergency which would be too administratively cumbersome, and have no impact, if put in place simply for the duration of an emergency.

The employer-based conservation measure applies to three categories of employers. The first category includes all private, corporate, or institutional employers who maintain a workplace where 100 or more persons are employed over a 24-hour period. There are over 2100 major employers throughout the state in this category, employing an estimated 500,000 people, or a third of the total employed. This group is a cross section of manufacturing, banking and finance, insurance, mining, and construction enterprises.

The second category comprises all post-secondary educational institutions in Minnesota that have a combined student/faculty/staff population of 200 or more. There are over 135 such institutions in the state employing 14,500 people and having a combined enrollment of 212,000 students.

The third category under this rule embraces all municipal, county and state worksites at which more than 50 persons are employed. The State of Minnesota alone employs 25,000 people. Eighty counties in the State maintain at least one worksite of 50 people or more. And 82 municipalities maintain worksites of 50 or more employees with a combined total employment of 21,000 people.

Pre-emergency conservation programs initiated to fulfill requirements of the employer measure could enhance the ridesharing, transit, or low energy transportation opportunities for three-quarters of a million employees and students at these employment sites.

Fifty-five percent of the daily average motor fuel consumption is attributable to work trips. Another 15 percent is attributable to commercial trips in automobiles, and light trucks. Unlike personal discretionary travel, these trips cannot be "limited" by choice when gasoline becomes in short supply or very expensive. The work trip and the business trip are the lifeblood of the State's economy and of individual economies.

The inflexible nature of the work trip and business travel does not, however, rule out the potential for conservation. Studies show that the work trip remains the area of greatest potential conservation savings. The Minnesota Dept. of Transportation (Mn/DOT) conducted vehicle occupancy surveys in the spring of 1980 which showed that the average vehicle occupancy between the peak morning "work trip" hours was only 1.25 persons per car, and that 75% of all vehicles were single occupant.

Emergency motor fuel conservation programs at the worksite, once in place, will aid employees and commuting students in responding to emergency shortage conditions. Employees not participating in a carpool in normal conditions may find a carpool both economical and time saving in emergency conditions. The capability to match employees to ridesharing vehicles takes preparation, planning, and lead time. Therefore it is reasonable to assume that ongoing conservation programs will have higher demand during fuel shortages.

Ridesharing and paratransit programs are generally regarded as having small potential if first attempted once a shortage has developed, but could yield significant motor fuel savings through increased use during an emergency.

Energy Savings Analysis

A probable range of motor fuel savings has been estimated for two employer conservation strategies; (1) the employer-sponsored rideshare program, and (2) the mandatory compressed work week.

1. Employer-sponsored rideshare program.

Motor fuel savings from increased employee ridesharing may be calculated by using the following formula:

$$(1)\quad GS(CP) = \left[\frac{CPOR}{AOR}\left(\frac{ART}{MPG} - H\right) - \frac{CRT}{CMPG}\right]$$

where:

GS(CP) = carpool motor fuel savings per day;
CPOR = carpool occupancy rate (average number of passengers per car);
AOR = automobile occupancy rate (average number of passengers per automobile);
ART = daily average round-trip miles traveled by automobiles to be replaced by a carpool;
AMPG = average automobile efficiency in miles per gallon;
H = daily average automobile consumption in gallons of motor fuel by a car left at home due to carpooling;
CRT = daily average round-trip miles traveled by a carpool; and
CMPG = average carpool efficiency in miles per gallon

For the purpose of the above calculation, the following values were used for Minnesota:

CPOR = 2.5 passengers/carpool
AOR = 1 passenger/automobile
ART = 0.9 X CRT = 27 miles
AMPG = 14.5 miles/gallon
H = 0.38 gallons
CRT = 30 miles
CMPG = 14.27 miles/gallon

Given that CRT = 30 miles, ART is assumed to be 90 percent of CRT to allow for the fact that a carpool will travel a slightly longer distance than the average distance traveled by the cars that the carpool replaces. The value for H of .38 gallons is taken from "Guidelines for Travel Demands Analysis & Program Measures to Promote Carpools, Vanpools and Public Transportation," prepared for the U.S. Dept. of Energy by Cambridge Systematics, Inc., Cambridge, Mass., November, 1976. Using an estimate of H = .38 gallons, the daily motor fuel savings per carpool is:

$$GS(CP) = \left[\frac{2.5}{1}\left(\frac{27}{14.5} - .38\right) - \frac{30}{14.27}\right]$$

$$= 1.6 \text{ gallons}$$

Assuming a 5 day work week, the weekly savings is 5 X 1.6 or 8 gallons per carpool.

According to "Motor Vehicle Facts and Figures 80" (at p. 49) approximately 70 percent of employed adults use single occupant auto transportation in getting to and from work. Auto occupancy counts conducted by the Traffic Management Center of the Minnesota Department of Transportation (Mn/DOT) similarly found 75 percent of vehicles between the hours of 6:30 to 8:30 a.m. to be single occupant. (See, Benke, "1980 Baseline Auto Occupancy Results") Ridesharing experts at Mn/DOT estimate however, that approximately 40 percent of the single-occupant commuters are unable to use mass transit or ridesharing because of the nature or location of their jobs.

Assuming this relationship (one out of three people can not or will carpool) holds true for employees at large worksites, out of a total working population of single occupant commuters of 600,000, 66 percent or 400,000 are potential ridesharers. At an average occupancy rate of 2.25 people per carpool, an additional 175,000 carpools could be formed statewide. In response to emergency conditions, a 70 percent employee participation rate might be expected, yielding an increase of 123,000 carpools. Seventy-five thousand foregone single occupant commuting trips would save 960,000 gallons per week. (120,000 new carpools X 8 gallons per week savings per carpool).

Savings = 960,000/44,000,000 gallons
This amounts to 2.2% of an average August week's gasoline consumption.

Other Effects and Considerations

The ridesharing strategy is particularly attractive because it causes no economic, personal, or social loss while yielding motor fuel savings. Furthermore, it may be undertaken at a relatively low cost to the participating employers.

Vanpooling was considered feasible as an emergency measure primarily because a vanpool delivers 100 passenger miles per gallon and in-place vanpool programs may be able to supplement the number of employee vanpools in an energy emergency. For the same reasons given for ridesharing programs, vanpool programs are more appropriately taken as a pre-emergency conservation measure. The calculation for energy savings from vanpools is the same as that for carpools, with the following value changes:

VPOR = 10.89 passengers/vanpool
AOR = 1.33 passengers/automobile
ART = (.9VRT) = 48.6 miles
AMPG = 14.5 miles/gallon
H = .38 gallons
VRT = 54 miles
VMPG = 10 miles/gallon

Thus, gasoline savings per day per vanpool would equal:

$$\left[\frac{10.89}{1.33}\left(\frac{48.6}{14.5} - .38\right) - \frac{54}{10}\right] = 21.66 \text{ gallons}$$

Compressed Work Week

If an employer does not have an approved emergency conservation plan and an energy emergency becomes severe, Rule 2.3120 B.9. provides that these employers may be required to institute a compressed work week. Analysis of this measure assumes that 50 percent of all major employers would opt for a four day work week under very serious shortage conditions rather than develop emergency plans.

Analysis

The gallons of motor fuel saved is equal to miles saved, divided by miles per gallon of motor fuel consumed The miles saved during a compressed work week equals the work trips made unnecessary because of a four day work week times the average work trip distance..

Miles saved = 320,000 work trips X 30 miles per average daily work trip (roundtrip)
= 9,600,000

Motor fuel savings equals the reduced vehicle miles divided by the average fuel economy less the added vehicle miles from increased discretionary driving.

Motor fuel savings = (9,600,000 - 14.5 mpg) - (216,000 - 14.5 mpg)
= 647,172 gallons

This is 1.5% of an average August week's gasoline consumption.

Legal and Equitable considerations.

The compressed work week measure is as a last resort strategy. A mandatory compressed work week necessarily interferes with normal business activity. Moreover, it will likely result in less than forty-hour a week for employees, unless ten hour days are established.

Before the Governor would consider imposition of such an onerous restriction on private sector activity, the following factors would have to be present:

1. A severe energy supply emergency exists which threatens priority services that protect the health and safety of the citizens of the state; and,

2. A substantial number of large employers already have met the requirement of the employer-based conservation measure by submitting to the Energy Agency an emergency motor fuel conservation plan and have been requested to implement strategies selected.

The State's ability to impose emergency measures which impair private contractual obligations otherwise prohibited under the Contract Clause of the U.S. Constitution, Art. I, § 10, Cl. 1 has been the subject of numerous constitutional challenges. The standard which a court might test the application of the compressed workweek measure was set forth in an opinion of the U.S. Supreme Court in Home Building and Loan Association v. Blaisdell 290 U.S. 398 (1934).

The Blaisdell standard for permissible exercise of state police power regulating private conduct in an emergency looks to whether the statute or (law):

1. Was enacted to protect a basic societal interest;
2. Is appropriately tailored to the emergency it was designed to meet;
3. Is temporary; and
4. Imposes conditions that are necessary and reasonable.

The Agency believes that the mandatory compressed work week measure meets the Blaisdell standard.

For the compressed workweek order to withstand an equal protection or 14th Amendment challenge, it must be determined to be rationally related to a legimate government objective. The objective of the employer-based conservation measure is to conserve motor fuel by requiring certain employers to adopt strategies which reduce employee commuting and business travel motor fuel consumption in an Energy Supply Emergency. The State has a compelling interest in energy emergencies to see that conservation is practiced to provide for the health and safety of the citizens of the State.

The size of the employer was determined important because of the feasibility and practicality of establishing rideshare programs at the worksite. Comments received from agencies providing ridesharing services supported the designated size criteria for establishing major employer categories, based on what was considered a minimum pool or population necessary to establish a viable worksite rideshare program. Group one employers, private employers with a worksite of 100 or more employees, number 2100[1]. There are an estimated 500,000 employees at these sites. Group two employers, post-secondary educational institutions with 200 or more commuting students, faculty, or staff number 135. There are as estimated 212,000 students attending these insitutions. And Group 3 employers, governments with a worksite of 50 or more employees, are comprised of state agencies, public corporations, counties and municipalities. There are estimated to be 220 government units meeting the minimum worksite standard and, who employ a combined workforce of 50,000.

The criteria used to designate major employers under the employer plan measure are reasonable standards for determining the minimum employment levels necessary to support ridesharing programs The employer selection by size of employment force also makes the decentralized planning more efficient and effective by reaching the greatest number of employees through a relatively few worksites.

The employer measure is expected to generate 1400 emergency motor fuel conservation plans. (Of this total, an estimated 1057 will come from large employers, 125 from post-secondary educational institutions 49 from state agencies, 82 from municipal governments, and 87 from county governments).

School Conservation Program Measure

Rule 2.3120 C. is designed to involve school administrators and students in emergency contingency planning and long term transportation conservation awareness. The school conservation program measure requires all school districts and private school authorities to submit conservation plans to the Energy Agency within 18 months after the effective date of the Petroleum Supply Emergency Rules or within 45 days after declaration of an Energy Supply Emergency, whichever comes first.

The school conservation measure is very similar in design and concept to the employer-based conservation measure. Again, the option of constructing a completely self-styled conservation plan that demonstrates the capability of reducing baseline consumption by 15 percent during an energy supply smergency is provided for in the rule.

The school conservation program differs in two important respects: (1) conservation plans are required under this rule, and (2) a different set and number of strategies are included.

The plan requirement is necessary because the measure contains no real inducements for emergency contingency planning and threatens no penalties if pre-emergency planning is not done. In order to ensure that school districts are minimally prepared for petroleum shortages and that equivalent conservation efforts are made statewide, the plan is made mandatory. The 18-month period for completing an emergency contingency plan spans two full academic years.

Schools, like large employers, are institutions which draw large numbers of people to a relatively few sites on a daily basis. There are 927,000 students enrolled in primary, intermediate, and secondary schools in Minnesota. In addition, there are approximately 20,000 employees, teachers, and administrators in the Minnesota public and private school system.

Conservation Strategies for Schools

The school conservation program measure is intended to reduce the motor fuel consumption incident to attending school for students and staff in an emergency. The measure is designed to meet this goal by decentralizing the decisions for emergency contingency strategies among the 436 school districts. By placing the planning and implementation responsibilities on the school districts, centralized decisions on energy conservation can be made at the state level, while allowing schools and school districts to take conservation actions most appropriate or acceptable to them.

The strategies contained in this rule are divided into Category I and Category II. Category I strategies include: (1) prohibiting student parking on and around school grounds, (2) postponement of all extra-curricular activities, and (3) cancelation of school for two days during a 30-day period. These actions will not be taken until an energy supply emergency has been declared and the school conservation program measure has been selected by the Governor. Category II strategies, generally, are actions which have the potential for reducing motor fuel consumption during an emergency if steps and organization has been undertaken prior to an emergency. Student/staff ridesharing programs, facilities for bicycle and moped parking, parking management, and bus and driver fuel economy education are the types of strategies that require

pre-emergency implementation to yield savings during an emergency In addition, elimination of the on-the-road portion of driver's education and selected extracurricular activities cancelations are included in category II strategies because of their potential to save some fuel, but are not substantial enough to rank as Category I strategies.

Because school districts will choose different combinations of strategies, the estimation of savings attributable to the two cases are merely illustrations. The total estimated savings however, assumes that each Category I strategy will be selected by an equal number of districts, thereby resulting in 33.3 percent of the districts prohibiting student driving, 33.3 percent cancelling extracurricular activities, and 33.3 percent closing school for two days a month.

The energy savings attributable to the full scale application of the school conservation measure ranges from 150,000 to 200,000 gallons a week or .4 to .6 percent of total consumption.

Measure Analysis

Case #1 Prohibiting student driving on or near school grounds for the duration of an energy supply emergency.

This measure is intended to reduce gasoline consumption by high school students who drive cars to school rather than ride regular route school buses. This strategy could be implemented as an outright ban on high school student parking on school grounds. In addition to reducing direct consumption of gasoline, this measure would serve to improve the overall operating efficiency of the pupil transportation system.

Energy savings which could result from statewide prohibition of student parking at and around schools appears to be significant. One might expect that the number of high school students driving would vary widely from one school district to another based upon varying levels of transit service and regular school bus service, as well as distances between schools and residences. However, the limited information available suggests that 30 to 40 percent of high school students typically travel to and from school in private automobiles. Of these students, a quarter need automobiles for activities such as on-the-job training, as no regular school bus transportation is usually provided for these purposes.

It is estimated that 75,000 high school students of legal driving age travel to school every day by private automobile. This number is derived by substracting the number of pupils using school-provided transportation from total enrollment. For 1977-78, total student enrollment in Minnesota was 927,000. Of this number, 813,000 students used school-provided transportation leaving 114,000 students arriving by other means. Assuming that two-thirds of these students are driving rather than being driven to school, an estimated 75,240 high school students are driving to school on a daily basis. (this amounts to half of the registered drivers between the age of 16 to 18 in Minnesota) Eliminating the 25 percent of those students who require auto transportation and who would be granted an exception to the parking prohibition, the remaining discretionary student driving to schools would

be 63,954 passengers. Applying the statewide average auto occupancy of 1.25 passengers per vehicle, this yields 53,295 student vehicles being driven to school each day. At an average round trip distance of 13 miles, 692,835 miles are driven daily, consuming 47,781 gallons per day.

Daily gallons	=	Total miles	average mpg
47,781	=	692,835	- 14.5

Student driving restrictions could save about a million gallons over a month's time. This would equal about .7% of an average February's total gasoline consumption.

Other Considerations

This measure would save gasoline normally consumed for an activity that is largely discretionary. Measures to reduce high school student driving would not only improve the efficiency of pupil transportation systems but also promote carpooling among students. If a fee system were imposed, parking fees collected by districts could be used to offset costs of supervision and administration of this measure.

Exemptions from driving restrictions could be granted to students who need vehicles for essential or work related trips during the day.

The obvious adverse effects of driving prohibitions to students is the inconvenience caused by these actions.

Case #2 Postponing extracurricular school events

Data necessary for analysis of the energy savings for this measure includes the following:

- -number of bus miles traveled,
- -breakdown of field trip versus extracurricular activities and athletic event miles,
- -historical seasonal/monthly breakdown of extra-curricular school bus miles,
- -fleet average mpg ratings for school buses,
- -gallons of fuel consumed, and
- -degree of switching of trips to private automobiles.

The table below displays statewide regular and extracurricular school bus miles traveled and fuel consumption from 1974 - 78. Authorized miles refers to the use of school buses to transport pupils to and from school. Extracurricular school bus use is categorized as "unauthorized" mileage and includes both field trips and athletic events.

TABLE III - 1

SCHOOL BUS FUEL CONSUMPTION

Year	# Of Buses	Authorized Mileage	Unauthorized Mileage	Total Mileage	Gallons of Fuel Consumed		
					Gasoline	Diesel	LPG
1974	7,880	80,159,167	7,656,848	87,816,015	20,272,373	139,067	11,992
1975	8,171	90,617,981	10,216,164	100,834,145	22,983,798	115,491	6,795
1976	9,362	94,001,243	11,276,903	105,278,146	22,177,077	152,308	72,683
1977	9,656	98,376,827	11,214,248	109,591,075	22,370,731	353,439	35,030
1978	8,333	99,045,987	11,067,525	110,113,512	22,694,600	344,779	91,384

Source: Minnesota Department of Education

The Department of Education estimates that 80% of the unauthorized mileage is for field trips and 20% is for athletic events. This mileage reflects school bus use during the period from September through early June each year.

Unauthorized mileage is spread evenly throughout the school year based upon 21 days/month, 9 months/year. The estimated fleet average mpg is 7 for gasoline-and propane-powered vehicles and 5.0 for diesel.

Estimated unauthorized miles driven using diesel fuel is calculated by multiplying the average diesel mpg by diesel gallons consumed during 1978.

Diesel Gallons x mpg = diesel miles
344,799 x 5 = 1,723,995 miles

$$\text{Total Diesel} \times \frac{\text{Unauthorized Mileage}}{\text{Total mileage}} = \text{Unauthorized diesel miles}$$

1,723,995 X .101 = 124,936 unauthorized miles

The resulting unauthorized miles traveled by gasoline and propane powered buses is calculated as follows:

total unauthorized bus miles - unauthorized diesel miles = gasoline miles
11,067,525 - 124,936 = 10,942,587 miles

Gallons of gasoline/propane saved is equal to miles saved divided by average mpg for school buses:

10,942,587/7 = 1,563,227 gallons
Of this 1,556,932 gallons are gasoline

This is .1% of the gasoline consumption for the period September through May. (71% of total annual VMT occurs during these months).

Other Considerations

The rule requires that the extracurricular event be cancelled or postponed during the energy emergency and not just that school bus transportation be discontinued. Otherwise, private auto use to transport students to these events may result in a net increase in gasoline consumption.

The relative educational benefit of field trips, athletic events and other extracurricular activities is a key concern. Cancellation of such activities will reduce the overall quality of the educational expericence and diminish the professional/economic opportunity for some students.

Speed Limit Measures

The speed limit measures include Rule 2.3120 H. Strict enforcement of posted highway speed limits, and Rule 2.3121 D. Reduction of maximum speed limits.

The speed limit measures are a part of the emergency conservation rules because driver compliance with the legal speed limits saves energy. Studies conducted by the U.S. Department of Transportation have shown that a large majority of automobiles get 20 percent better fuel economy at 55 mph than at 70 mph. A 5 percent savings is gained by slowing from 60 to 50 mph. The Voluntary Truck and Bus Fuel Economy Program has also found reduced speeds save fuel for diesel-powered 5-axle tractor-trailers and buses.

Measure Analysis

The energy savings estimates for these measures are based upon a methodology developed by the Minnesota Department of Transportation (MN/DOT). This methodology utilizes speed monitoring data compiled from 75 sites throughout the state. These sites are located on four different road systems, including interstate urban, interstate rural, multi-lane divided, and two-lane rural. Speed monitoring has been conducted since the 55 mph speed limit was enacted in 1973. The percentage of motorists exceeding the 55 mph limit has ranged from a high of 85 percent in 1973, to a low of 56 percent in 1979.

The analysis also used Mn/DOT vehicle miles traveled (VMT) data. Total VMT in Minnesota is estimated to be $28,680 \times 10^6$ miles annually. Nearly half of this mileage, or 52 percent, occurs at speeds above 45 mph.

Figure III - 4 below shows the relationship between speed and fuel consumption for automobiles. Figures III - 5 shows this relationship for diesel trucks.

Figure III - 4

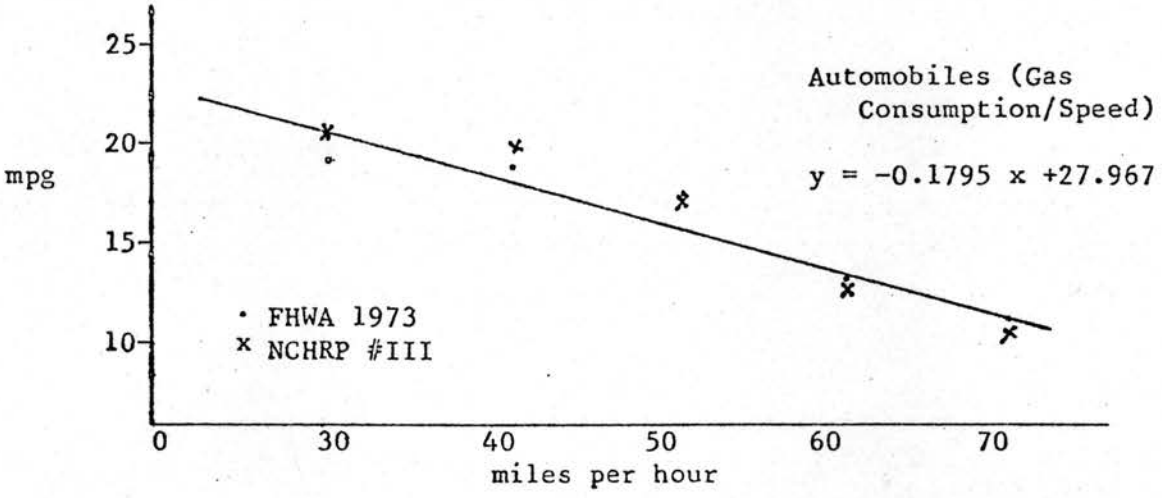
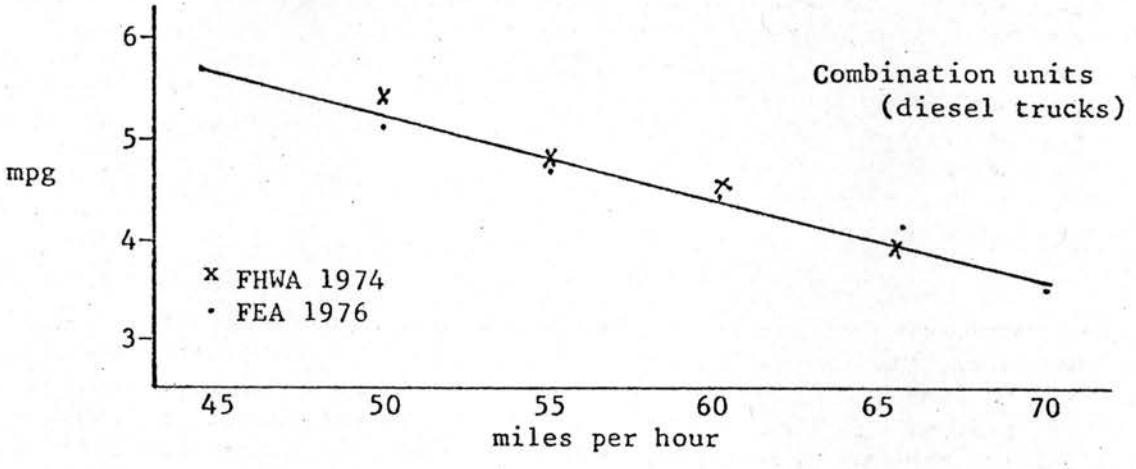


Figure III - 5



The above plotted fuel consumption/speed relationship yields the following representative tables for automobiles and diesel trucks.

TABLE III - 2

EFFICIENCY SPEED (MPG-AUTO)	FUEL EFFICIENCY (MPG-TRUCK)	FUEL
45	5.5	19.7
45-50	5.4	19.3
50	5.2	18.9
50-55	5.1	18.4
55	4.9	18.0
55-60	4.8	17.5
60-65	4.4	16.6
65-70	4.1	15.8

Table III - 3 shows the present vehicle speeds traveled by gasoline powered vehicles and by diesel trucks. Table III - 4 shows the present fuel use by these vehicles by speed range. Table III - 5 indicates what the fuel use would be, if vehicles traveling in excess of 55 mph were to reduce their speed to or below the legal limit. Table III - 5 estimates are based on the speed (fuel relationship) displayed earlier in Figures III - 4 & 5.

TABLE III - 3

PERCENTAGE OF VEHICLES IN SPEED RANGES
(composite of all highways)

	45-50	50-55	55-60	60-65	65-70	TOTAL
Automobiles	6	30	44	15.6	3.5	99
Trucks	10	32.8	40.3	13.6	1.9	98.6

TABLE III - 4

FUEL USED IN SPEED RANGES
(gallons/day)
(all highways)

	45-50	50-55	55-60	60-65	65-70	55+ TOTAL
AUTO & GAS TRUCK	160,916	669,593	902,697	345,152	82,104	1,329,953
DIESEL TRUCK	35,184	135,294	189,584	72,727	12,683	274,994

TABLE III - 5

FUEL USED IF VEHICLES TRAVELING IN EXCESS OF
55 MPH REDUCED THEIR SPEED TO OR BELOW 55 MPH
(for all highways)

	45-50	50-55	55-60	60-65	65-70	TOTAL
AUTO & GAS TRUCK	- - -	- - -	878,380	316,827	71,738	1,266,955
DIESEL TRUCK	- - -	- - -	185,715	59,796	10,612	256,123

Using the above data in the following general equation, fuel savings from strict compliance with the 55 mph speed limit can be estimated.

Fuel savings = Fuel used presently - Fuel used at lower speeds

1. Gasoline saved at 100% compliance with the 55 mph limit then equals:

Fuel presently used (see Table III - 4)	-	Fuel used at lower speeds (see Table III - 5)	
1,329,953 gallons	-	1,266,955 gallons	=

62,999 gallons per day

Converted to annual savings, strict compliance of 55 mph limit yields 23 million gallons a year or approximately 1% of the yearly total gasoline consumption of 2.2 billion gallons.

2. Diesel fuel savings from 100% compliance with the 55 mph limit is similarly arrived at:

Fuel Savings =	Fuel used presently (see Table III -4)	-	Fuel used at lower speeds (see Table III - 5)
Fuel Savings =	274,994 gallons	-	256,123 gallons

Fuel savings = 18,871 gallons per day

Converted to an annual figure, strict compliance with the 55 mph speed limit yields a savings of 6.9 million gallon or 2.7 perecent of a total annual highway diesel fuel consumption of 250 million gallons.

Speed Limit Reduction

The same methodology and data is used to estimate savings from a 50 mph speed limit

Reducing the speed limit to 50 mph would save 51.6 million gallons a year of gasoline or 2.75 percent of the annual average consumption and 11.3 million gallons a year of diesel fuel or 4.5 percent of the annual consumption of highway diesel fuel.

Other Considerations

A speed limit reduction is limited to severe shortage conditions, whereas increased enforcement and "energy fines" are potential actions in the early stages of a shortage.

Energy consumption impact from reduced speeds would be immediate, although increased enforcement and compliance would be necessary to realize the potential savings of this measure. Based upon cost estimates from the Division of Public Safety's "Project 55," statewide personnel costs would be approximately $90,000/month for stringent speed limit enforcement. This figure accounts for salaries for three additional officers per county. A speed limit change would require Mn/DOT and county highway departments to change signs and post the new limit. The expenses to the state and local governments of these speed limit measures would have to be weighed against the increases in revenues from fines and savings in fuel expenses to estimate true costs.

Reduction of the limit to 50 mph will increase the time needed to make a trip or ship goods. As approximately 75 percent of all passenger trips are under 50 miles, and over 50 percent are under 20 miles, travel time for most personal trips would not be significantly increased however, employees commuting long distances to work would have increased commuting times. Trucking firms claim that the measure would increase vehicle and driver time in the shipment of goods and consequently, the cost of shipping. Some shifts from bus and auto use to rail and air travel for long distance trips may be expected.

In other respects, it appears that this measure would be equitable. Major overall advantages of speed limit measures include the moderate fuel savings achieved without appreciable loss in mobility, and the accompanying benefits in traffic safety through reduced speeds. The inconvenience of added time in transit during a very severe shortage would be a minor irritant as compared to the serious problems incident to a serious shortage of the type necessary to require reduction of the speed limits.

Rule 2.3120 D. Odd/Even Motor Fuel Purchase Restriction Measure

Description of Measure

The odd/even restriction limits the purchase of motor fuel by vehicles with odd-numbered license plates to odd-numbered days of the month and vehicles with even-numbered license plates to even-numbered days. Vehicle users exempted from the alternating day purchase restriction include: energy production, emergency vehicles, agricultural production, sanitation services, telecommunications, commercial vehicles, cargo and freight hauling, including mail and newspaper delivery vehicles, passenger transportation vehicles, and out-of-state licensed vehicles.

Energy Savings

There are two ways in which an odd-even restriction will result in motor fuel savings. The first because demand reduction effect occurs when people forego trips because the distance traveled requires more than one tank of gas on the restricted purchase day. The second demand reduction effect of the restriction involves the added implicit cost of buying gasoline when a restriction is added.

Trip Reduction Effect

Eight percent of all gasoline is consumed by vehicles traveling over 300 miles (approximately one tankful) a day. It is estimated that 60 percent of this travel will be made impractical by the odd-even restriction. Of this travel, 50 percent will be eliminated entirely, and an additional 10 percent may be eliminated because the trip involves travel on the third, fifth, etc., day following departure.

Fifty percent of the 300 mile or longer trips will not be eliminated but rescheduled and taken on another day. It may be further assumed that households with more than one vehicle will use the unrestricted purchase vehicle to make the trip. Half of the multiple car households, or more than 25 percent of all auto-owning households will have at least one vehicle eligible for purchase on any given day of the week.

A fifth assumption is that one-eighth of the foregone trips by auto will be replaced by other means of transportation.

Finally, it is assumed that one-third of the long trips in the west, and two-thirds in the east (where states are smaller) will travel beyond bordering states, because odd-even restrictions are not usually applied to out-of-state cars from beyond bordering states.

The above-mentioned assumptions result in the following calculation:

Fuel Savings from
Odd/Even Restriction = 8% x .6 x .5 x .75 x .875 x .67, or
= 1 percent reduction in gasoline consumption
or 471,681 gallons in an average August week.

Price Effect

The inconvenience of the purchase restrictions implicitly raises the price of gasoline and so results in further demand reduction. MIT estimates

taken from "Estimation of Gasoline Demand Reduction from Odd-Even Sales Restriction," assigns a cost of 5¢ and 10¢ a gallon for this inconvenience in an 8% gasoline shortage. Minnesota's estimated short-term price elasticity of demand is -.229 (from FEA Regional Demand Interface Model, 1977 estimate for Region 5). A 5¢ rise in gasoline prices would result in a .9% drop in demand, or 396,500 gallons in an average August week.

Other Considerations

This measure is easy and quick to implement because it requires no extensive resource committments.

An odd-even purchase requirement would also reduce lines at gasoline stations in the event that price controls are reinstated. There is no evidence, however, that odd-even purchase restrictions reduce "panic buying" or "tank-topping."

The measure may have a negative impact on the tourist industry. Weekend trips of 250 miles or longer may be severely reduced. Shorter trips may also be reduced as a result of concern that gasoline will be needed on the restricted days.

As mentioned earlier, the measure may also cause some inconvenience. People will have to adjust their purchasing schedules to the permitted days. Gasoline station attendants will bear the major responsibility of enforcement of the restriction against noncomplying customers.

Rule 2.3121 A. Vehicle Permit-Sticker Program Measure

Description of the Measure

This measure would require all motor vehicle owners to forego use of their vehicles for one day per week (Monday-Sunday). The day selected would be identified by a sticker prominently displayed on each vehicle. The permit-sticker program would require a "no-driving" day selection based on vehicle ownership. This method of permit-sticker selection is intended to restrict most households to a concurrent "no-driving" day for all vehicles owned by the members of the household.

Exemptions from the permit-sticker requirement will be granted to emergency vehicles, common and contract carriers, single unit vehicles with a weight rating of 10,000 pounds or greater, fuel production vehicles, vehicles directly engaged in agricultural production, registered vanpools, vehicles propelled by fuels for which the energy emergency does not apply, motorcycles and mopeds, short term vehicle rentals, and other such users that the Governor may determine.

The Department of Public Safety would administer the permit application-issuance system. Provisions would also be made to change the selected day through an application process at certain intervals during the emergency.

Energy Saving Impact Analysis

Energy savings estimates for the vehicle sticker program measure are dependent upon the following:

-Level of enforcement and resulting compliance levels,
-Number of exempted vehicles, and
-Degree of switching trips (which normally would be taken) from the no-driving day to alternative days.

The methodology utilized to determine energy savings under this emergency measure is based upon work conducted by the Massachusetts Institute of Technology (MIT). The MIT analysis indicated that a one-day a week vehicle operation prohibition based upon the household owner as the sticker selection decision-making unit (i.e., all vehicles in the household must have the same day sticker) would reduce gasoline demand by 2 to 5%.

Energy savings calculations for Minnesota were derived based on several assumptions. First, a permit-sticker program is assumed to affect only work-related travel. Secondly, personal trips not made on a drive-less day will be deferred and made on another day.

The vehicle permit-sticker plan is designed to issue permits based on vehicle ownership and would restrict most households to a concurrent no driving day for all vehicles.

Assuming all personal and social VMT are switched to other days of the week, gasoline savings will equal the reduction in miles normally driven for the work trip by the fleet of vehicles subject to the one-day prohibition. Because one-fifth of the total week's savings will occur each working day, it can be assumed that the permit-sticker measure will save each week an amount equal to the reduction in work-related gasoline consumption of one day's travel times 5 days a week. Daily work related VMT approaches 38 million miles. Assuming a 90% compliance with the permit-sticker plan, this is reduced 35 million miles.

Of the 35 million daily work-related vehicle miles, 82% or 29 million miles are driven in single occupant vehicles and would be affected by the sticker plan. It is further assumed that the method of alternative transportation selected to commute to work will reflect those currently used (from Motor Vehicle Facts and Figures, 1979).

64% - Carpool
16% - Bus
2% - Bicycle and Motorcycle
.4% - Taxi
15% - Walk
3% - Other

The gasoline consumed by carpools would equal the percentage of total miles switched to carpool's divided by the occupancy of carpools, plus the increased driving arising from the need to pick people up (assumed to be 10%).

(.64 x 29,000,000/2.25) + .1 (.64 x 29,000,000/2.25) = VMT by carpool

8,250,000 + 825,000 = VMT
9,075,000 = VMT
9,075,000/14.5 = Gasoline Consumed
625,850 = Gasoline Consumed by carpools formed in response to sticker plan

The fuel consumed by switching to mass transit (van pools and buses) is derived similarly. Bus occupancy is assumed to average 40 people during the day time.

(.16 x 29,000,000/40) = VMT by mass transit vehicles
116,000 = VMT

Fuel efficiency of buses is assumed to be 7 mpg, resulting in the following:

116,000/7 = Gallons consumed
16,571 = Gallons consumed by buses due to increased ridership

Bicycle and motorcycle travel is assumed to be split equally. The fuel efficiency is a weighted average of 0 gallons per mile for bicycles and .01 gallons per mile for motorcycles or (.5 x 0) = (.5 x .01) = .005 gallons per mile or 200 mpg.

(.02 x 29,000,000/1) = VMT
580,000 = VMT by bicycle and motorcycles
580,000 - 200 mpg = 2900 gallons

Taxi miles driven include miles necessary to drive to pick up the rider, estimated to be 80% of the distance to work.

(.004 x 29,000,000/1) + (.8 x .004 x 29,000,000/1) = VMT
116,000 + 92,800 = VMT
208,800 = VMT

Fuel efficiency is assumed to be the same as other autos, 14.5 mpg.

208,800/14.5 = Gallons consumed
14,400 = Gallons consumed

We assumed walking and 'other' uses consume no gasoline.

Fuel saved, then, is equal to total fuel consumed less the fuel consumed by the alternative methods of transportation.

29,000,000/14.5 - (625,850 + 16,571 + 2,900 + 14,400)
1,240,279 = Gallons saved

This is 3% of the average August weekly consumption and 4.2% of the average February weekly consumption.

Economic/Other Impacts

The permit-sticker measure involves significant state resources, perhaps as much as 3 million dollars for nine months. The manufacturing and issuance of stickers, processing applications for exceptions, enforcement, public information and other necessary program elements add to the time required before such a system could be put into effect. The cost and time factors limit the potential of this measure in a short term energy supply emergency.

Once imposed however, this measure would affect the routine of persons who depend exclusively on their automobiles for mobility on a seven day per week basis and who would not qualify for exemptions or exceptions.

Individuals who have access to public transportation and ridesharing programs will generally sacrifice less than those who do not. Likewise, persons without access to these alternatives would be at a definite disadvantage.

Furthermore, transit systems are already experiencing greater than capacity ridership demands during peak periods, and further demands on the system could not be met without large capital expeditures.

The economic impacts of the sticker measure on the state's economy should not prove substantial, because of the alternating pattern of nondriving days and the exemption of the transportation and trucking industry from the requirement.

Rule 2.3121 B. and C. Recreational Vehicle Bans Measure

Introduction

Two types of recreational vehicle (RV) bans are included in this measure description. The type I ban applies only to self propelled vehicles with living quarters and to vehicle-trailers with living quarters. The Minnesota Division of Driver and Vehicle Services classifies and registers these vehicles as class R (1981 class RV), self propelled, and class RA (1981 class RL), recreational trailers. The license plates issued to these vehicles display these letters as a prefix to the license number. The type II ban applies to snowmobiles.

The selection of a type I or type II RV ban is dependent upon the season during which an energy emergency is declared and upon the severity of the shortage. Both type I and type II RV bans are stage IV - serious shortage measures. The significant gasoline savings resulting from a type I ban, compared with the major economic costs and impacts of other stage IV measures justify its inclusion into the state emergency conservation plan.

Description of Type I RV Ban

A type I RV ban imposed during an energy emergency would prohibit the use and operation of class R (RV) and RA (RL) vehicles on public roads for a period not exceeding 15 days for each 30-day declared

emergency period. The obvious purpose of this measure is to temporarily remove these vehicles from the fleet and eliminate their share of gasoline consumption. A type I RV ban presumes that owners and operators of these designated vehicles have an alternative means of transportation and therefore will not necessarily suffer a loss of mobility.

The decision to impose a type I ban would be the Governor's upon the recommendation of the staff of the Emergency Operating Center. If a type I ban is to be imposed, a minimum of five days advance notice will be given before the effective date of the ban.

Exceptions: RV owners may apply to the local conservation board for an exception.

Methodology

The type I recreational vehicle ban applies to class R (RV) and RA (RL) vehicles only.

In 1980, there were 36,079 self propelled RV's with living quarters and 81,817 RV's with living quarters (non-self propelled). RV's have an estimated annual mileage of 5,200 miles and a fuel efficiency of 6 miles/gallon (MN/DOT, "An Analysis of Minnesota's Vehicle Registration System and Other User Fees", January 1979). Self-propelled RV's and RV's pulled by another vehicle are assumed to have the same annual mileage and fuel efficiency. Annual mileage is assumed to be intrastate only. Out-of-state travel is assumed to be in equal portions travel away from Minnesota and travel to Minnesota. Therefore no adjustment is made for "pass through" RV travel.

Analysis

Gasoline Savings = (Vehicle Miles by RV's - RV fuel efficiency) x Total RV's

$$Gs = \frac{5200 \text{ miles per year}}{6 \text{ miles per gallon}} = 867 \text{ gallons/RV}$$

$$Gs = 867 \text{ gallons/RV} \times 117{,}895 = 1.02 \times 10^8 \text{ gallons per year}$$

Assume that 95% of RV travel occurs during the 6 summer months May through October.

$$1.02 \times 10^8 \text{ gal/yr} \times .95 = 9.69 \times 10^7 \text{ gal/summer season}$$

$$\frac{9.69 \times 10^7 \text{ gal}}{6 \text{ months}} = 1.615 \times 10^7 \text{ gallons per summer month}$$

$$\frac{1.615 \times 10^7 \text{ gal/month}}{4} = 4.03 \times 10^6 \text{ gallons per summer week}$$

The 4.03×10^6 gallons per summer week represents nearly 9% of the total gasoline consumption of 44 million gallons occurring over a summer week.

We assume, however, that 50% of RV travel will be switched to nonprohibited types of transportation. The alternative transportation

mode is assumed to have an average mpg of 14.5 or 2.4 times that of an RV. Thus energy savings would be reduced to

$$4.03 \times 10^6 - \frac{(.5 \times 4.03 \times 10^6)}{2.4} = 3.2 \times 10^6$$

or approximately 7% of an average August week.

Description of a Type II Recreational Vehicle Ban

A type II RV ban, imposed during a winter period energy emergency, would prohibit the use and operation of snowmobiles upon state and other public lands and rights-of-way within Minnesota. The snowmobile prohibition could not exceed 15 days during a 30 day emergency ban period. The ban could, however, be renewed as energy emergencies are renewed.

Exceptions

The snowmobile ban is intended only to prohibit recreational use of snowmobiles. Users of snowmobiles for essential personal or commercial purposes, or where other means of transportation are impractical, are eligible for exceptions from this provision. Persons seeking an exception to the snowmobile ban must apply in writing to the local conservation board of appropriate jurisdiction. The board, upon a finding for the applicant, will recommend that an exception be granted and an exempt sticker issued.

Use of snowmobiles upon private property with the owner's permission is not prohibited. Use of snowmobile upon private property without the owner's permission is trespassing and currently a violation of state law.

Methodology

There are 276,000 registered snowmobiles in Minnesota (DNR figures). Snowmobile use is limited to the months where an adequate snow blanket covers traditional recreational sites. These months are usually January through March.

Snowmobiles are estimated to travel between 55-100 miles per season. This assumes at least two days per winter use at between 30-50 miles per day. The snowmobile average fuel efficiency is 15 mpg.

276,000 (snowmobiles) x 30 (miles per month)
= 8,280,000 miles per winter month
8,280,000 miles traveled by snowmobiles -
15 mpg (average snowmobile fuel efficiency)
= 552,000 gallons
552,000 gallons used by snowmobiles in a winter month -
1.28 billion gallons consumed over average February month
= .4%

It is assumed that 40% of snowmobile use, that which occurs on private property or by exceptions, will continue during ban. The net result of a type II RV ban is a gasoline savings of 331,200 gallons per month, or .25% of the gasoline consumed during an average winter month.

The strong case to be made for these stringent restrictions is the fact that the bans result in (1) significant fuel savings, (2) no loss in personal mobility for essential purposes, and (3) conservation of fuel for more economically productive uses. The "singling-out" of RV's places less a constraint on personal mobility than would other types of driving bans or work week cutbacks. An RV ban moreover aims at reducing recreational travel in fuel-inefficient vehicles, a lower priority use during an emergency where essential transportation, home to work trips and other more economically productive uses, are subject to cutbacks. Finally, the economic impacts of an RV ban on private and state resorts are not certain, as offsetting recreational demands may restore losses expected from these bans.

Economic Impacts

The RV ban is discriminatory in as much as it "singles" out a particular type of vehicle and use.

The adverse effects of a type I RV ban would most likely fall on private recreational parks and state parks which cater to campers. The loss of business of RV users would probably not have as large an impact as the total effect of voluntary travel cutbacks due to energy emergencies.

The impact of the RV bans on RV sales is difficult to assess. During the period of the ban, sales would probably suffer. The limited duration of such a prohibition should not, however, change consumers' preference for these vehicles in the long run.

The adverse effects of a snowmobile ban fall primarily on the users. The ban does not affect snowmobile use on private property, but it recognizes that a majority of snowmobile users depend upon trails provided on public lands to enjoy their snowmobiles. The ban is clearly aimed at eliminating this privilege and saving the gasoline incident to RV use. The merchants and lodges which cater to snowmobilers would experience losses during a ban due to the decrease in snowmobile clientele. Losses may be offset by increases in vacationers preferring nonmotorized recreational pursuits.

Rule 2.3121 E. One-Day Driving Ban Measure

Description of the Measure

A one day driving ban would reduce motor fuel consumption by prohibiting all vehicles from traveling for a specified 24-hour period. The driving ban could be imposed on a week day or a weekend day depending on the severity of the shortage. A week day ban, though yielding greater gasoline savings, would result in greater economic loss.

Exemptions from the driving ban would consist of a limited set of first priority uses and other uses necessary to protect and preserve human health and prevent extensive damage of plant equipment or industrial processes. Travel to and from the worksite for persons

maintaining first priority services such as utilities, telecommunications, emergency services, and news publication and delivery will be permitted under a ban. Hospital and residential health care facilities personnel, and persons requiring daily medical attention will be exempted from the ban for travel to and from the work or treatment site.

Additionally, persons assigned by an employer for minimum plant operation and maintenance, security services, or plant protection will be exempt from a driving ban.

All "exempt" travelers under a driving ban should be identified by personal identification and authorization provided by the employer. The form of such identification to the person and the vehicle will be recommended by the Agency prior to a driving ban.

Potential Energy Savings

The gasoline savings resulting from this measure is assumed to equal miles not driven as a result of the ban divided by the average fuel efficiency (mpg). Miles not driven are assumed to equal total miles driven on the banned day minus the miles driven by exempted vehicles, minus driving miles switched to other days, minus miles driven by ban violators.

Exempted miles are assumed to equal 9% of total daily auto miles (from U.S. DOE, "Standby Conservation Plan", 1979). Workday miles switched are estimated to be 44% of work miles (52% of total VMT), 58% of personal business miles (24.9% of total VMT), and 60% of social and recreational miles traveled (or 23.1% of total VMT), or an estimated 51.1% of weekday miles traveled will be switched. Weekend miles switched are calculated in a similar way.

Finally, miles driven by violators of the driving ban must be subtracted from the gasoline savings estimated. Minnesota and New Jersey surveys indicate there is high compliance with mandatory measures during emergency situations. Enforcement of this measure is made more difficult by the large number of exempted and excepted users, however, private vehicles will be presumed to be in violation and will be stopped and an inquiry will be made as to the purpose of the trip. If the motorist can not readily establish that he/she is among the class of users exempt from the ban, a citation will be issued. For these reasons there is expected to be a 90% compliance rate.

Gasoline savings calculation for an August work day is:

$$\begin{aligned}\text{Exempted Miles} &= \text{Fraction Exempted Travel X VMT per day for autos} \\ &= .092\ (.866 \times .00331 \times 28{,}680 \times 10^6) \\ &= 7{,}563{,}327\end{aligned}$$

Where .00331 = fraction of VMT for average August work day
.866 = fraction of VMT by autos
28,680 x 10^6 = total annual VMT in Minnesota
Miles Switched = ((% total miles traveled for work x % switched) +
(% miles traveled for family x % switched) +
(% miles traveled for social x % switched)) x
VMT per day
= ((.52 x .44) + (.249 x .58) + (.231 x .61)) x
(.00331) (.866) (28,860 x 10^6)
= .51 x (82,726,036)
= 42,531,937

Vehicle Miles Saved
= (Total VMT - Miles Switched - Exempted Miles)
x Compliance Rate
= (82,726,036 - 42,531,937 - 7,563,327) x .9
= 29,367,695
Gallons saved = Miles saved/Miles per gallon
= 29,367,695/14.5
= 2,025,358
% Saved = Gallons Saved/Gallons Consumed per week
= 2,025,358/44,082,340
= 4.6%

Gasoline saved from driving ban on an average Sunday in August:
(See previous calculations for definitions of equations.)
Miles Exempted = 7,511,627
Miles Switched = ((.092 x .53) + (.202 x .6) + (.7 x .71)) x
(.00303 x .866 x 28,680 x 10^6) = 50,192,573
Miles Saved = ((75,255,746 - (50,192,573 + 7,511,627) x .9
= 15,796,391
Gallons Saved = 15,796,391/14.5
= 1,089,406
% of weekly consumption saved = 1,089,406/44,082,340
= 2.5%

Other Considerations:

This measure could be implemented rapidly, although some lead time would be required to coordinate administration and enforcement. Once preliminary work is completed, implementation could occur within one to two weeks after announcement. This measure would not restrict interstate travel by out-of-state vehicles, except to the extent that fuel would be generally unobtainable during the ban.

Driving bans, especially a week day ban, would have significant adverse economic effects. Retail and manufacturing operations would be especially affected by this measure. Minnesota's tourist trade might also suffer from a one day ban.

A weekend ban would conflict with major religion's traditional day of worship.

SUPPLY MANAGEMENT

During a gasoline shortage, measures will be taken that do not actually free up any gasoline. Rather these measures are intended to reduce lines that may occur if price controls are reinstated, and generally minimize disruptions resulting from shortage. Extensive use will be made of state set-aside to ensure that major routes have some open gasoline stations and essential service vehicles have adequate gasoline supplies. These are on-going activities in the Energy Agency and will not be discussed further here.

The supply management tools to be used during motor fuel emergencies are the minimum purchase requirement, a flag system, and motor fuel availability and information program.

Rule 2.3120 E. Minimum Purchase Requirement Measure

A minimum purchase requirement is intended to stop 'tank topping' and reduce the waiting time for gasoline purchases by reducing the frequency of fillups. This requirement will also decrease the vehicle fleet's average gasoline storage level and provide a one time infusion of gasoline supplies.

Description of Measure

This measure requires a minimum purchase of:

5 gallons for all vehicles.

The retailer will not be in violation of federal price regulations to collect the minimum dollar amount specified by the requirement, even if the customer does not purchase sufficient quantities of gasoline at the seller's posted price to reach the minimum dollar amount.

First priority vehicles are exempted from this measure. In addition, motorcycles, mopeds, and similar two (or three) wheeled vehicles are exempted from this measure.

The gasoline retailer and the vehicle operator are separately required to comply with these provisions.

Analysis of Effects

A minimum purchase requirement works by limiting vehicle refills until tank storage has been reduced to some specified level. During the "shortage" of 1979 minimum purchase laws required that $5 be purchased for 4-cylinder v[illegible] and $7 be purchased for a vehicle with more than 4 cylinders.

There are approximately 2 million registered automobiles in Minnesota (MVF&F 1980). Assuming an average tank capacity of 15 gallons per vehicle, the total mobile reservoir could be 30 million gallons.

MIT estimates that 50 percent of the people only fill their tanks when below half a tank. This implies that 50 percent of all motorists fill when less than half a tank has been emptied.

The average mobile gasoline inventory might be estimated by assuming that one half of all autos fill when only 1/4 of a tank has been emptied. The following equation can be devised:

$$\left(.5 \times .5 \times (30 \times 10^6)\right) + \left(.5 \times .75 \times (30 \times 10^6)\right) =$$

mobile gasoline inventory

$$= \quad 18.75 \text{ million gallons}$$

A minimum purchase requirement would affect the purchasing habits of the 50% who normally fill with less than 5 or 7 gallons according to car-size.

The mobile storage of gasoline would be reduced through the minimum purchase by restricting the purchase of fuel to motorists who would normally fill with a lesser amount.

The mobile gasoline inventory would fall to 16.5 million gallons, calculated as follows:

(new proportion of tank holding motor fuel) x (total tank capacity)

$$(.55) \times (30 \times 10^6)$$

$$= \quad 16.5 \text{ million gallons}$$

Normal storage (18.75 million gallons) less minimum purchase level of storage (16.5 million gallons) yields a one-time infusion of 2.25 million gallons of gasoline or about one gallon per automobile.

MIT estimates that assuming 50% of people would follow this practice without any regulation. A minimum purchase requirement, however, would result in a storage reduction of one gallon per car. In Minnesota, this would yield a one-time savings of approximately 2,000,000 gallons.

This measure will also reduce lines. It is assumed that 50% of people are 'tank topping', or filling up when they use 1/4 of a tank (4 gallons on the average). Under the minimum purchase requirement, people would be allowed to fillup only when 1/2 of a tank has been emptied. Trips to the gas pump will be reduced by 50% for tank toppers. If 50% of drivers are tank toppers, this means a 25% reduction in total trips to the gas pump (.5 x .5).

Thus, the minimum purchase requirement will free up a small amount of gasoline, and significantly reduce trips to gasoline service stations, thereby reducing lines.

Rule 2.3120 F. Flag System Measure

The flag system requires gasoline retailers to post a green, yellow, or red flag to indicate the availability of motor fuel at that station. The purpose of the measure is to reduce discrimination and favoritism practiced by some station operators. It will also aid consumers in finding open gasoline stations.

Description of Measure

Each service station will clearly indicate its gasoline supply and servicing status by displaying a readily visible flag. The flag should be visible from 100 yards in either direction of the station. Flags will be provided by the gasoline retailer.

Flags shall be displayed as follows:

1) Green Flag - Gasoline is available for the general public. In critical situations, emergency vehicles will be allowed to move to the head of any existing gas line. An example of this might be an ambulance which is making a long distance emergency run and needs more gasoline to complete the trip. If a service station is flying a green flag, they cannot show any preferential treatment in the serving of non-emergency customers.
2) Yellow Flag - Gasoline is available only for priority vehicles. Automobile servicing may be available to the general public but the sale of motor fuel is limited to first priority users. If a service station is flying a yellow flag, they cannot preferentially serve nonpriority vehicles.
3) Red Flag - Out of gasoline and/or closed.

Discussion of the Measure

The flag system has no demand reduction potential, nor is it intended to. It can be implemented very quickly and at minimum cost to the state. The cost to retailers will also be small.

The measure makes the distribution of existing supplies of gasoline more equitable and efficient.

Compliance with this measure will be difficult to monitor. Violations by retailers will not be easily identifiable and consumers may not be aware that they are being discriminated against.

Rule 2.3120 G. Motor Fuel Availability Program Measure

The purpose of this program is two-fold:

1) To maximize the hours during which motor fuel is available to consumers; and
2) To publicize motor fuel availability information in order to encourage the efficient and equitable distribution of motor fuel.

Description of Program

The DES will seek the cooperation of motor fuel retailers who have provided 24-hour gasoline sales and road service in the past. The state will take action to ensure that gasoline is available for sale at key locations throughout the state. These locations will also provide 24-hour road service.

Fuel coordinators may assist communities in organizing a system whereby gasoline retailers will remain open evenings and weekends on a rotating basis. Credit card machines may be exchanged to provide maximum availability to consumers, with the agreement of area retailers.

Participating 24-hour service stations will be published regularly in local and/or statewide newspapers. This information will also be supplied to AAA (American Automobile Association) for distribution through their 24-hour hotline. The Emergency Operating Center will also work with the Department of Economic Development, Tourist Information Center to provide gasoline availability information service.

Discussion of Measure

This measure does not save any gasoline. It is rather, intended to ensure the efficient and equitable distribution of available motor fuel supplies. Coordinating retailers' hours of operation may actually cause an increase in gasoline consumption.

The benefits from such a program in minimizing the disruptions and hardship resulting from a shortage outweigh any disadvantages.

Respectfully submitted for the Minnesota Energy Agency on this 23rd day of July, 1981.

by:

Richard A Wallen

Assistant Director for the Data Analysis Division

David A. Buller

Manager of Supply and Demand Analysis Unit

Abigail McKenzie

Oil Analyst

David G. Miller

Emergency Rules Analyst

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing Implementation of the State Energy Supply Conservation and Allocation Plan During a Petroleum Supply Shortage; 6 MCAR §§ 2.3101-2.3121

Docket No. EA-81-004-PR

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Dated: May 3, 1982

Dwight S. Wagenius

Special Assistant
Attorney General

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed Adoption of the Rules of the Minnesota Department of Energy, Planning and Development Governing Implementation of the State Energy Supply Conservation and Allocation Plan during a Petroleum Supply Shortage
6 MCAR §§ 2.3101 - 2.3121

Docket No. EA-81-005-PR
AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marietta M. Olsen, being first duly sworn, deposes and says:

That on the 26th day of April, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States Mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Marietta M. Olsen

Subscribed and sworn to before me this 26th day of April, 1982.

Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

STATE OF MINNESOTA

DEPARTMENT OF ENERGY, PLANNING AND DEVELOPMENT

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Department of Energy, Planning and
Development Governing Implementation
of the State Energy Supply Conservation
and Allocation Plan during a Petroleum
Supply Shortage
6 MCAR §§ 2.3101 - 2.3121

Docket No. EA-81-005-PR
NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, April 26, 1982, for review as to form and legality. Pursuant to 1 MCAR § 1.206B., the Attorney General will not approve the rules for at least ten calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which the Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rules of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency. (The address is give below.)

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact Mr. Gregory Holman, Energy Division of DEPD, 980 American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota 55101.

Abigail E. McKenzie

Abigail E. McKenzie
Energy Analyst
Energy Division
Department of Energy, Planning and
Development