

Appendix B

**Chapter 15-10
Hawaii Administrative Rules**

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Adoption of Chapter 15-10
Hawaii Administrative Rules

January 26, 1987

1. Chapter 15-10, Hawaii Administrative Rules, entitled "Procurement, Control, Distribution, and Sale of Petroleum Products During Fuel Shortage", is adopted to read as follows:

Appendix B (continued)

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT

Chapter 10

Procurement, Control, Distribution and Sale of Petroleum Products During Fuel Shortage

Subchapter 1. General Provisions

- §15-10-1 Purpose
- §15-10-2 Definitions

Subchapter 2. Retail Sales Measures

- §15-10-3 Odd-even sales restrictions
- §15-10-4 Minimum and maximum purchase requirements
- §15-10-5 Maximum purchase for separate containers
- §15-10-6 Posted hours of operation
- §15-10-7 Prohibited hours of sale
- §15-10-8 Sales limited to daily allocations
- §15-10-9 Uniform flag system
- §15-10-10 Applicability; violations

Subchapter 3. State Set-Aside Program Rules

- §1510-11 Set-aside system
- §15-10-12 Set-aside volume
- §15-10-13 Assignment of Set-aside
- §15-10-14 Base period
- §15-10-15 Supplier liaison to the state
- §15-10-16 Price
- §15-10-17 Application process for set-aside supplies
- §15-10-18 Evaluation of applications
- §15-10-19 Decision and authorization of set-aside assignments
- §15-10-20 Time limits for action on applications
- §15-10-21 Appeals, Who may file
- §15-10-22 When to Appeal
- §15-10-23 What to file
- §15-10-24 Where to file
- §15-10-25 Notice to interested parties
- §15-10-26 Contents of appeal
- §15-10-27 Processing of appeal

Appendix B (continued)

§15-10-28 Criteria for evaluating appeal
§15-10-29 Decision and action

Appendix B (continued)

Subchapter 1

General Provisions

§15-10-1 Purpose. The purpose of this chapter is to provide rules governing the procurement, control, distribution, and sale of petroleum products in the event of a fuel shortage as defined in Section 125C-2, Hawaii Revised Statutes, in compliance with section 125C-4 and 125C-23, HRS.

[Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4, 125C-23)
(Imp.: HRS §125C-3, 125C-22)

§15-10-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Agricultural production" includes the following:

- (1) Production of cash grains and field crops, including cotton and tobacco; vegetables, melons, fruits, and nuts, including food grown under cover;
horticultural specialties including the growing of flowers, nursery products and seeds; cattle, hogs, sheep, goats, dairy animals and dairy products, poultry and poultry products (including pheasants and quail), and rabbits; bees and honey; aquaculture, including, fish, frogs, shellfish, prawns, algae, and other aquacultural species used for food;
- (2) Agricultural services, including soil preparation, the planting, cultivating, protection (spraying, dusting, etc.), and harvesting of crops, tobacco stemming and redrying, cotton ginning, and preparation of crops for market;
- (3) Veterinary services for cattle, hogs, sheep, goats, poultry, and other farm animals excluding pets, pet kennels, grooming of horses and other equines, and grooming of pets;
- (4) Ornamental shrub and tree services, excluding landscape counseling and planning and lawn and garden services;
- (5) Forestry and forestry services including logging camps and logging contractors, sawmills and planing mills;
- (6) Commercial fishing, fish hatcheries and preserves, hunting, trapping, and game propagation;
- (7) Manufacturing or processing of foods and beverages for human and animal consumption, including soft drinks, beer, wine, ice, and vegetable and animal fats and oils, but excluding dog, cat, and other

Appendix B (continued)

pet foods, chewing gum, and distilled, rectified, and blended liquors;

- (8) Mining, milling, and manufacture of fertilizers, pesticides, and agricultural chemicals;
- (9) Farm to market hauling and log trucking; and
- (10) Water supply systems for farm irrigation.

"Allocation, daily" means a retail fuel dealer's monthly fuel allocation divided by the number of days in the month on which motor fuel sales will be made.

"Assignment" means an action taken by the shortage management center designating prime suppliers of petroleum products to supply state set-aside fuel to an authorized bulk-purchasing end-user, wholesale purchaser-consumer, or wholesale purchaser-reseller, to alleviate hardship or emergency conditions.

"Base period" means the twelve-month period immediately preceding the governor's official declaration of a fuel shortage; it is intended to provide a supply benchmark for determining an applicant's needs or eligibility for set-aside supplies.

"Commercial use" means consumption of fuel by those purchasers engaged primarily in the sale of goods or services and for uses other than those involving industrial activities and electrical generation.

"Consumer" means any individual, trustee, agency partnership, association, corporation, company, municipality, political subdivision, or other legal entity which purchases petroleum products for ultimate consumption in Hawaii.

"Department" means the department of planning and economic development.

"Emergency services" means law enforcement, fire fighting, emergency medical services, and other groups which specifically provide essential emergency services.

"End-user" means any person, firm, or other entity which is an ultimate consumer of a petroleum product.

"Energy production" means the exploration, drilling, mining, refining (except for petroleum products), processing, production, and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels, and electrical energy. The definition also includes construction of facilities and equipment and similar capital goods. Excluded from this definition are synthetic natural gas manufacturing, and electrical generation whose power source is petroleum based.

"Firm" means any association, company, corporation, estate, individual, joint venture, partnership, sole proprietorship, or any entity however organized, including

Appendix B (continued)

charitable and educational institutions and federal, state, and county governments.

"Flag system" means a queue management measure for use during a fuel shortage, whereby colored flags are displayed to indicate whether a retailer has fuel available to the general public, available only to vehicles providing emergency service, or has no fuel available.

"Health care facilities" means those facilities, providing medical, dental, or nursing services, including but not limited to clinics, hospitals, nursing homes and the like.

"Industrial use" means consumption of fuel by firms primarily engaged in a process which creates or changes raw or unfinished materials into another form or product.

"Jitneys" means any relatively fixed-route, shared-ride, transportation service offering both fixed and enroute loading unloading of passengers.

"Liter" is the metric unit of liquid volume, now frequently used to measure fuel. One liter is slightly over a quart; one liter equals 1.057 quarts or 0.2642 gallon.

"Maximum purchase for separate containers" means a queue management measure for use during a fuel shortage, in which a maximum of two gallons of fuel may be sold and delivered into a separate container other than a vehicle's fuel tank, for use in lawn mowers and other small gasoline-driven appliances.

"Minimum purchase requirement" means a queue management measure for use during a fuel shortage, whereby a specified minimum dollar amount and volume of fuel must be purchased for a given vehicle during a single transaction. The primary purpose is to prevent customers from purchasing small quantities of fuel simply to keep the tank filled.

"Motor fuel retailer" as used in these rules includes every person, firm, partnership, association, trustee, or corporation owning, leasing, renting, managing, or operating a motor fuel service station or other facility offering for sale or otherwise dispensing motor fuel to the general public

"Odd-even sales restriction" means a queue management measure for use during a fuel shortage, which specifies that if the license plate number of a customer's vehicle is odd, the customer may purchase fuel only on odd-numbered days of the month, and if the registration number of a customer's vehicle is even, only on even-numbered days.

"Passenger transportation services" means air, water, rail and surface facilities and services, for carrying

Appendix B (continued)

passengers, whether publicly or privately owned, including but not limited to:

- (1) Tour and charter buses and taxis which serve the general public;
- (2) Bus transportation of pupils to and from schools and school-sponsored activities;
- (3) Vanpool; and
- (4) Jitneys.

"Petroleum products" means motor gasoline, diesel fuel, gasohol, kerosene, propane, number 2 heating oil, number 4, number 5, and number 6 residual oil for utility and nonutility uses, and Bunker C fuel.

"Posted hours of operation" means a queue management measure for use in fuel shortage emergencies, requiring fuel retailers to post clearly legible signs indicating the days and hours during which motor fuels will be dispensed to the general public. Certain uniform hours applying to all retail fuel sellers may also be required.

"Prime supplier" means that supplier which makes the first sale of any petroleum product into the state distribution system for consumption within the State. For purposes of the state set-aside, Hawaii refiners are not considered prime suppliers when transferring, exchanging, or selling refined products to major Hawaii marketers (Shell, Chevron, Union, Texaco, Aloha, PRI/HIRI).

"Prohibited hours of sale" means a queue management measure for use during fuel shortage emergencies whereby sales of motor fuel are prohibited during morning and afternoon peak traffic hours to prevent queues from interfering with the flow of traffic.

"Residential use" means direct consumption of fuel in a residence, apartment building, or condominium, or in a church or other place of public worship, for space heating, cooking, water heating, and similar uses.

"Sanitation services" means the collection or disposal or both of solid wastes for the general public, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities during emergency conditions. The term also includes the provision of water supply services by public utilities, whether privately or publicly owned and operated.

"Set-aside" means the amount of a prime supplier's petroleum product subject to the provisions of the State set-aside rules and which is made available from that supplier for use by the shortage management center in emergencies and to ease hardships due to fuel shortages or dislocations in distribution.

Appendix B (continued)

"Shortage" (of fuel) means a condition which exists whenever the governor determines that there is an increase in the demand for any petroleum product which is five per cent or greater during a current or forthcoming month than the average demand for that product during that month in the immediately preceding two years, and the increased demand has not been met by a corresponding increase in supply of the product in question; or there is a decrease in the available supply of any petroleum product which is five per cent or greater during a current or forthcoming month less than the average supply available during that same month in the immediately preceding two years, and the decrease has not been met by a corresponding decrease in demand for the product in question; and such increase in demand or decrease in supply may cause a major adverse impact on the economy, public order, or health, welfare, and safety of the people of Hawaii, and may not be responsibly managed within the free market distribution system.

"Shortage areas" means a given area or community suffering hardship because of an imbalance in the supply or distribution or both, of petroleum products for whatever reason, such that lines at service stations are longer, hours of dispensing fuel are shorter, and fuel is generally in shorter supply than in other comparable areas. If prime suppliers cannot readily correct the imbalance, then county officials or designated area representatives may apply to the State for hardship set-aside to correct the imbalance, providing documentation of the existence of such an area shortage. For purposes of this definition, an area or community may be a town, city, or unincorporated area; an island; a military base exchange; or any well-defined or recognized area characterized by geographic features (e.g., a valley) or by traditional acceptance as a community.

"Shortage management center" or "SMC" means the office within the state department of planning and economic development designated to manage the state set-aside and other fuel emergency programs.

"Supplier" means any firm or any part or subsidiary of any firm, other than the Federal Department of Defense, which presently supplies, sells, transfers, or otherwise furnishes as by consignment, any petroleum product subject to the State set-aside to wholesale purchasers or end-users, including refiners, natural gas processing plants or fractionating plants, importers, resellers, jobbers, and retailers.

"Telecommunication services" means the operation, maintenance and repair of voice, telegraph, video, and

Appendix B (continued)

similar communication services to the public by a communications common carrier.

"Vanpooling" means eight or more persons commuting on a daily basis to and from work by means of a vehicle having a seating capacity of eight to fifteen adult passengers.

"Wholesale purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer or combination of both.

"Wholesale purchaser-consumer" means any person, firm, or other entity which is an ultimate consumer of fuel and which, as part of its normal business practice, purchases or obtains a petroleum product subject to the state set-aside from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location.

"Wholesale purchaser-reseller" means any person, firm, or other entity which purchases, receives through transfers, or otherwise obtains, as by consignment, a product subject to the State set-aside and resells or otherwise transfers it to other purchasers without substantially changing its form (for example, a service station). [Eff FEB 17 1987]

(Auth: HRS §§125C-1, 125C-4) (Imp: HRS §125C-3)

Subchapter 2

Retail Sales Measures

§15-10-3 Odd-even sales restrictions. (a) At the retail level, motor fuels shall not be dispensed into any vehicle on any odd-numbered day of the month (1st, 3rd, 27th, etc.) unless the last numerical digit on the license plate of that vehicle is odd.

(b) At the retail level, motor fuels shall not be dispensed into any vehicle on any even-numbered day of the month (2nd, 4th, 30th, etc.) unless the last numerical digit on the registration (license) plate of that vehicle is even.

(c) In the event that there are no numerical digits, but only letters (e.g., as in some personalized license plates), the registration plate shall be considered even.

(d) For any calendar month consisting of an odd number of days (31, or 29 for February in leap years), fuel sales made on the last day of the month will not be subject to the

Appendix B (continued)

odd-even restriction, but shall be made without regard to the license plate of the vehicle.

(e) Motor fuel purchases made at self-service gasoline stations, whether payment is made by insertion of a credit card in a card-reading mechanism, by the use of coin-operated pumps, or by payment to a cashier, shall be governed by the same odd-even rules. During a declared shortage situation, an attendant shall be present to verify the odd or even license number and compliance with other rules as applicable.

(f) Odd-even sales restrictions shall not apply to:

- (1) Vehicles in priority categories as provided in section 15-10-18(3) and (4);
- (2) Vehicles displaying the Kahili sticker on the windshield indicating a disabled person;
- (3) Commercial vehicles marked with an appropriate sticker; or
- (4) Vehicles operated in an unusual emergency situation in the judgment of the retail station operator.

(g) When dispensing motor fuel to the general public, motor fuel retailers shall not refuse to sell fuel to anyone for any reason other than non-compliance with this chapter or problems related to payment or credit. Motor fuel retailers shall not require the purchase of special goods or services such as car washes, tires, lubrication, or other goods and services, as a condition to the purchase of motor fuel. In addition, retailers shall not dispense fuel on a preferential basis such as by appointment or to regular customers only.

(h) If fuel supplies are limited to the extent that the simple odd-even system does not relieve queueing to a sufficient extent, alternative systems may be put into effect by executive order of the governor. For example, a three-day/Sunday closing plan shall permit purchase of gasoline only twice a week: license numbers ending in 0, 1, 2 and 3 shall purchase fuel on Monday and Thursday; 4, 5, 6, and 7 on Tuesday and Friday, and 8, 9, and letters on Wednesday and Saturday. Stations shall be closed for gasoline sales on Sundays. Still other arrangements may permit purchasing fuel only once a week or at other intervals.

[Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4) (Imp: HRS §125C-3)

§15-10-4 Minimum and maximum purchase requirements.

(a) Specific minimum dollar amount or volume of motor fuel shall be purchased for a single vehicle during a single transaction. When the minimum amount specified, in the

Appendix B (continued)

governor's executive order is a whole dollar amount, it shall include all applicable taxes. If the vehicle's tank cannot hold the entire amount of fuel covered by the minimum dollar amount or volume, the retailer may collect the total amount of the required minimum sale. Under no circumstances shall a separate container be used for fuel to make up the difference between the vehicle's capacity and the specified minimum purchase. Signs clearly detailing the minimum purchase rule shall be displayed on each motor fuel pump at every retail station.

(b) The minimum purchase requirement restriction shall not apply to the following:

- (1) Vehicles having a tank capacity of eight gallons or less;
- (2) Motorcycles, mopeds, and similar two or three-wheeled vehicles;
- (3) Police, fire, ambulance, or other emergency vehicles; or
- (4) Vehicles operated in an unusual emergency situation in the judgment of the retail station operator.

(c) No sale of fuel shall be made in excess of twenty-five gallons or ninety-five liters. This restriction shall not apply to commercial vehicles marked with an appropriate sticker. (Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4)

(Imp: HRS §125C-3)

§15-10-5 Maximum purchase for separate containers.

Not more than two gallons or eight liters of motor fuel shall be sold or purchased for delivery into a "safety approved" container other than the fuel tank of a vehicle, to be transported away from the premises of a retail seller. This restriction shall not apply to containers to be used for a commercial purpose, such as for fueling commercial landscaping or construction equipment, electrical generators, etc.

[Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4) (Imp:

HRS §125C-3)

§15-10-6 Posted hours of operation. (a) Each motor fuel retailer shall post signs clearly legible from off the premises indicating the days and hours during which motor fuels shall be dispensed to the general public. The signs may include, but are not limited to, the weekend day and time the station will be open. The retailer shall dispense motor fuel during the days and hours posted on the sign. The opening time shall be stated. Other selling times shall also be stated, but may be qualified with the statement "if daily gas allocation still available" or other similar language. If a queue exists when a retailer nears the end

Appendix B (continued)

of the retailers daily allocation of fuel or nears closing time for the sale of fuel, a sign may be placed on the rear of the last vehicle the retailer reasonably feels may be serviced, stating "LAST CAR FOR GAS."

(b) Every motor fuel retailer shall open for public sale of fuel at or before 6:00 a.m., Monday through Friday, unless exempted. Stations may continue public sales at any other times not expressly prohibited by this chapter.

(c) Weekend and holiday sales of motor fuel shall be coordinated by the division of measurement standards, state department of agriculture, so that to the extend possible, at least one station in each area shall have pumps open on weekends and holidays during the hours from 8:00 a.m. to 5:00 p.m. unless at least one-sixth of the retailer's weekly motor fuel allocation is sold before 5:00 p.m. This subsection shall not apply to any motor fuel retailer who is out of fuel because of later delivery or who has fewer than three pumps installed at the retail station.

(d) Motor fuel retailers having regular commercial customers who are in priority category (as provided in section 15-10-18 (3) and (4) shall establish certain hours of operation, which shall be posted in accordance with subsection (a), to service priority and commercial customers who are not subject to the restrictions which apply to the general public. Such commercial vehicles shall be issued a sticker indicating their priority and exemption from the restrictions.

[Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4) (Imp: HRS §125C-3)

§15-10-7 Prohibited hours of sale. The dispensing of fuel by motor fuel retailers may be prohibited during certain hours in urban or congested areas to prevent queues from interfering with peak hour traffic flow. For example, that dispensing may be prohibited between 7:00 a.m. and 8:15 a.m. and between 4:00 p.m. and 6:00 p.m., Monday through Friday in the city and county of Honolulu. [Eff FEB 17 1997] (Auth: HRS §§125C-1, 125C-4) (IMP: HRS §125C-3)

§15-10-8 Sales limited to daily allocations. Motor fuel retailers shall manage their monthly fuel supply so that it will last through the month. A daily allocation of fuel shall be determined by dividing the dealer's monthly fuel supply allocation by the number of days in the month on which motor fuel sales shall be made. A motor fuel retailer may sell up to ten per cent of the next day's allocation in addition to the current day's allocation, provided that the following day's sale of fuel is reduced by the amount.

Appendix B (continued)

[Eff FEB 17 1987] (Auth: HRS §§125C11, 125C-4) (Imp:
HRS §125C-3)

§15-10-9 Uniform flag system. (a) Motor fuel retailers shall indicate their fuel supply and service situation by the display of a flag at least eighteen inches square and easily visible from off the premises. The flags shall have the following colors and corresponding meanings:

- (1) Green flag means motor fuel is available to the general public;
- (2) Red flag means motor fuel is not available and the station is closed or open only for auto servicing; and
- (3) Yellow flag means motor fuel is available only to emergency vehicles or others exempt from the order and the station is open for auto servicing.

(b) If a retailer is out of any grade of motor fuel but is otherwise still dispensing fuel to the general public, the retailer shall attempt to the best of the retailer's ability to indicate by means of signs which grades are not available.

[Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4) (Imp:
HM §125C-3)

§15-10-10 Applicability; violations. (a) Unless otherwise specified, this chapter shall apply to a:

- (1) Vehicle operator;
- (2) Motor fuel retailers; or
- (3) Motor fuel retailer or an employee thereof.

(b) A violation of these rules may result in a criminal charge against any or all of the persons specified in subsection (a). [Eff FEB 17 1987] (Auth: HRS §§125C-1, 125C-4) (Imp: HRS §125C-3)

Appendix B (continued)

Subchapter 3

State Set-Aside Program

§15-10-11 Set-aside system. (a) In the absence of a federally authorized set-aside system, the governor or a authorized representative, in order to manage an energy shortage within the State, may implement a state set-aside system for any or all of the following petroleum products: motor gasoline, diesel fuel, heating oil, kerosene, propane, and residual fuel oil.

(b) A shortage management center (SMC) within the department shall direct prime suppliers to make available to the State each month a percentage, not to exceed five per cent of the total amount of each designated petroleum product which they expect to make available for sale within the State during that month. The SMC shall assign set-aside supplies to meet the emergency and hardship needs of wholesale purchaser-consumers, particularly those in certain priority categories such as police and fire departments, medical and health care, public transportation, etc. Additionally, the set-aside program shall permit the SMC to make assignments of fuel to commercial and priority end-users who customarily purchase fuel from a wholesale purchaser-reseller, through the appropriate supplier, to alleviate hardships, and also through the appropriate suppliers, to alleviate unusual shortage conditions in a shortage area. [Eff FEB 17 1987] (Auth: HRS §125C-23)
(Imp: HRS §§125C-22, 125C-23)

§15-10-12 Set-aside volume. (a) The SMC shall notify each prime supplier of the monthly set-aside percentage, not to exceed five per cent, applicable to each product subject to the set-aside program. Prime suppliers shall be notified of set-aside percentages not later than fifteen days prior to the beginning of each allocation month.

(b) The total set-aside volume available to the SMC for any particular month shall be the sum of the amounts calculated by multiplying the state set-aside percentage level by each prime supplier's estimated supply for that month which will be sold into the state's distribution system for consumption within Hawaii. The set-aside for a particular month shall not be accumulated or deferred by the State, but shall be made available from current monthly stocks of prime suppliers.

Appendix B (continued)

(c) The SMC shall confirm the set-aside volume for a particular month from the supplier's monthly report (Form EIA 782C which shall be received by the SMC not later than five working days prior to the first day of the applicable month.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-13 Assignment of set-aside. (a) At any time during the month the SMC may order the assignment of all or part of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(b) The SMC shall assign set-aside to meet emergency and hardship requirements of all wholesale purchaser-consumers and end-users who customarily purchase fuel from wholesale purchaser-resellers. The SMC may direct a prime supplier to supply set-aside to a wholesale purchaser-consumer or bulk-purchasing end-user directly, or to supply set-aside through the appropriate supplier to a commercial or priority end-user who purchases fuel at retail.

(c) The SMC shall not authorize assignment of set-side fuel for requests involving less than fifty gallons, except in special cases.

(d) From time to time, the SMC may designate shortage areas. At any time during the month, the SMC may order some or all of the prime suppliers having retail outlets in such shortage areas to release part or all of their remaining set-aside volume through their normal distribution systems to increase the allocations of all suppliers' retail outlets located within such shortage areas.

(e) Orders issued by the SMC in accordance with this section shall be in writing and effective immediately upon presentation to the prime supplier's set-aside volume for the month of issuance, even if for some reason delivery cannot be made until the following month.

(f) The SMC shall assign set-aside at the beginning of the month if an applicant can demonstrate that a supply emergency or hardship is faced which requires immediate attention. By the fifteenth day of the month, the SMC shall make an initial determination as to how much of the set-aside shall be released to prime suppliers. Any set-aside products not allocated by the twentieth of the month shall automatically revert to the supplier. [Eff FEB, 17 1987]

(Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-14 Base period. (a) A base period shall be adopted by the SMC and shall be used as a historical benchmark from which the SMC shall evaluate the validity of any application for set-aside assignment. The base period

Appendix B (continued)

for all applicants shall be the twelve month period immediately preceding the official declaration of a shortage by the governor.

(b) All fuel made available to applicants shall be assigned, when possible, to the supplier distribution system from which the applicant purchased fuel during the base period

(c) Prime suppliers shall be responsible for smoothing out anomalous situations in their customers' base periods, such as a business being closed during a portion of the base period.

(d) All applicants for set-aside shall be required to list on each application their base period purchases and the names of their base period prime suppliers or distributors, or both. [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-15 Supplier liaison to the State. Each prime supplier shall designate a person to act as a liaison for and on behalf of the prime supplier with respect to the set-aside system. Each prime supplier operating within the State shall notify the SMC in writing of the designation within ten day of the implementation of a set-aside program. [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-16 Price. Each supplier shall make available to bulk purchasing end-users, wholesale purchaser-consumers, or wholesale purchaser-resellers at prices prevailing for similar classes of purchasers from that supplier in the locality of the set-aside purchaser at the time of sale of the product. Suppliers shall charge prevailing prices for set-aside products, and shall not place a premium or spot price on set-aside volumes except to recover documented extra transportation costs to deliver the set-aside fuel in accordance with the supplier's normal business practice. Any report of unjustifiable prices charged to an applicant for set-aside fuel may be investigated by the SMC or the state attorney general. [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-17 Application process for set-aside supplies.

(a) An applicant may be a wholesale purchaser-consumer seeking an assignment from the set-aside program to meet a hardship or emergency, or a commercial or priority end-user who customarily purchases fuel from a retail fuel outlet (service station) or jobber and who has a hardship or emergency situation. Wholesale purchaser-resellers are not eligible to apply for set-aside.

(b) Application for assignment for fuel from the set-aside supplies shall be made in writing or by telephone.

Appendix B (continued)

The appropriate form to file is state form SMC-1, which may be obtained from the SMC or other designated agencies. Whether verbal or written, applicants must provide at least the following:

- (1) The applicant's name, address, and telephone number;
- (2) Name of the applicant's contact person;
- (3) Category of the applicant (wholesale purchaser-consumer or commercial retail purchaser);
- (4) Name of the applicant's supplier product brand and type;
- (5) Delivery location;
- (6) A list of the applicant's monthly purchases of fuel during the twelve months immediately preceding the State's declaration of a shortage emergency. In addition, wholesale purchaser-consumers shall state the nature of their emergency or hardship and the efforts made to manage the situation and to conserve fuel;
- (7) Any previous assignment order from the set-aside system that was issued to applicant;
- (8) A statement that the applicant's historical supplier is unable to supply the applicant's requirements through normal channels, or if the applicant does not have a supplier, a statement that the applicant has contacted two suppliers who could not supply the applicant with the requested product, and showing the identity of such suppliers; and
- (9) Any other relevant information requested by the SMC.

(c) All applicants shall submit their application for set-aside supplies to the SMC by the fifteenth of the month for which fuel is being allocated. If the fifteenth falls on a weekend or on a state or federal holiday, the application shall be filed by the preceding workday. Only emergency applications shall be received after that date.

(d) Applications shall be filed with the Hawaii Shortage Management Center, Department of Planning and Economic Development.

(e) Applicants on the neighbor island shall file applications through their respective county fuel office, from which county fuel office shall promptly forward the application to the SMC with any added recommendations by the county.

Appendix B (continued)

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-18 Evaluation of application. (a) The SMC may initiate an investigation of any statement in an application, whether written or oral, and use in its evaluation any relevant facts obtained by that investigation. All applications and information contained therein are considered confidential and shall not be disclosed. In evaluating an application, the SMC may consider any source of information.

(b) The SMC may dismiss an application without prejudice if the SMC determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted. If the failure to supply additional information is repeated or wilful, the SMC may dismiss the application with prejudice.

(c) First priority for set-aside shall go to wholesale purchaser-consumers and end-users who buy either directly from prime suppliers or from wholesale purchaser-resellers and are involved in any of the following activities:

- (1) Agricultural production, including agricultural trucking and agricultural aviation;
- (2) Aviation ground support vehicles and equipment;
- (3) Cargo, freight, and mail hauling truck;
- (4) Emergency services;
- (5) Energy production;
- (6) Health care facilities;
- (7) Nonmilitary marine shipping;
- (8) Public utilities;
- (9) Mass passenger transportation services;
- (10) Sanitation services;
- (11) Telecommunication services; or
- (12) Street and highway maintenance, and repair.

(d) Second priority for set-aside shall go to all wholesale purchaser-consumers and end-users not listed in subsection (c).

(e) In addition to meeting the needs or priority end-users or wholesale purchaser-consumers, the SMC may assign set-aside in accordance with section 15-10-13.

(f) The SMC may add to, delete from, or otherwise amend the priority classification when the amendment is accomplished by written justification. The amendments shall be publicly announced and advertised. [Eff FEB 17 1987]

(Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-19 Decision and authorization of set-aside assignments. (a) Upon consideration of the application,

Appendix B (continued)

and other relevant information received or obtained during its evaluation, the SMC shall make a decision denying or granting the application.

(b) Upon granting a set-aside, the SMC shall issue to the applicant an order authorizing such assignment. The order shall state that it is effective upon issuance and shall expire unless the applicant presents a copy of the order to the prime supplier or a designated representative thereof with ten days of the issuance of the order. The SMC shall mail copies of the order to the applicant and to the state representative of the designated prime supplier. Prime Suppliers shall provide the assigned amount of a product specified in the order upon its receipt or presentation by the applicant.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23).

§15-10-20 Time limits for action on applications.

(a) If the SMC fails to take action on an application, whether oral or written, within fifteen days of filing then the applicant may treat the application as having been denied and may appeal therefrom as provided in this chapter. If the application is oral it shall be considered filed on the date that it is orally communicated to the SMC, and an application shall be completed and filed within 24 hours of the telephone call by the person receiving the call.

(b) The SMC may temporarily suspend the fifteen day limit described in subsection (a), by mailing a notice to the applicant that additional information is necessary to evaluate the application or that the application is improperly filed. That temporary suspension shall remain in effect until the SMC mails the applicant a notice that the additional information requested has been received and accepted or that the application has been properly filed, as appropriate. Unless otherwise provided in writing by the SMC, the fifteen day period shall resume on the first working day following the date on which the SMC mails applicant the notice that it has received and accepted the additional information or that the application has been properly filed. [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-21 Appeals; Who may file. (a) Any person may file an appeal if aggrieved by a set-aside order issued by the SMC.

(b) An appeal shall not be filed regarding a set-aside request that has been reduced by the SMC by a set percentage for all applicants in the same priority category.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

Appendix B (continued)

§15-10-22 When to appeal. Any appeal of a SMC order regarding a set-aside application shall be postmarked not later than fifteen days after the postmark date of the decision which is being appealed. [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp HRS §§125C-22, 125C-23)

§15-10-23 What to file. (a) A person appealing a SMC order shall file:

- (1) A written "Appeal of Order" which should be clearly labeled as such, both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be signed by the person filing the appeal; and
- (2) A copy of the order which the appellant is appealing.

(b) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under this subsection, the appellant shall file together with the appeal a second copy of the document from which has been deleted the information for which the appellant wishes to claim confidential treatment. The appellant shall indicate in the original "Appeal of Order" that is confidential or contains confidential information and shall file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-24. Where to file. Appeals from State set-aside orders shall be filed with the SMC, Department of Planning and Economic Development. ATTENTION: State Set-Aside Appeals.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-25 Notice to interested parties. (a) The appellant shall send, in a manner that it shall be received on the next following day, a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with section 15-10-23 (b), to each person who is likely to be aggrieved by the action sought, including those who participated in any prior proceedings regarding the subject application for set aside supplies. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the SMC within three day. The appeal shall include certification that the appellant has complied with the requirements of this subsection and shall include the

Appendix B (continued)

names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding subsection (a), if an appellant determines that compliance with that subsection would not be practicable, the appellant shall:

- (1) Comply with the requirements of subsection (a) with regard to those persons for whom it is reasonable and possible to notify; and
- (2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent.

The appellant may be require to provide additional or alternative notice, or it may be determined that the notice required by subsection (a) is not practicable.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-26 Contents of appeal. (a) The appellant shall specify the precise legal and factual bases for the appeal, fully explaining why the appellant believes the SMC's order was wrong and why the appellant's particular situation constitutes a hardship or emergency requiring the appellant to receive fuel under the State set-aside program. The State shall assign fuel only if the appellant can demonstrate that the appellant is experiencing a hardship or emergency.

(b) To assist the SMC in processing the appeal and to ensure that the appellant's position is fully understood, the "Appeal of Order" shall include at least the following:

- (1) The action number assigned by the SMC and found on the Order or the letter of denial;
- (2) The month for which set-aside was applied;
- (3) The exact reasons why the appellant believes the decision made by the SMC is erroneous;
- (4) A statement indicating that new or additional information is submitted and an explanation as to why the information was not submitted with the original application;
- (5) An estimate of the minimum amount of fuel needed to carry on the appellant's activities;
- (6) The distance to the nearest retail outlet and whether the appellant has attempted to obtain fuel from that outlet, and an explanation if the appellant has not done so;
- (7) A statement of all efforts the appellant has undertaken in appellant's operations to conserve fuel;

Appendix B (continued)

- (8) A statement as to what will happen to the appellant's operations if the appellant does not receive the requested set-aside fuel; and
- (9) Any other reasons why appellant believes that the circumstances entitle appellant to receive set-aside assistance for instances of hardship or emergency. [Eff FEB 17 1987]
(Auth: HRS §125C-23) (IMP: HRS §§125C-22, 125C-23)

§15-10-27 Processing of appeal. (a) The SMC may initiate an investigation of any statement in an appeal and use in its evaluation any relevant facts obtained by such investigation. The SMC may solicit and accept submissions relevant to any appeal provided that the appellant is afforded an opportunity to respond to all submissions. In evaluating an appeal, the SMC may consider any other sources of information.

(b) If the SMC determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the SMC may dismiss the appeal, with leave to amend within a specified time. If the failure to supply additional information is repeated or wilful the SMC may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by section 15-10-21 (5), the SMC may dismiss the appeal without prejudice. If the appellant submits false statements that appellant may be subject to prosecution.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)

§15-10-28 Criteria for evaluating appeal. (a) An appeal may be summarily denied if:

- (1) It is not filed in a timely manner, unless good cause is shown for any delay;
- (2) It is apparent that the appeal has failed to state, and to present facts and legal argument in support thereof, that the SMC's action was erroneous in fact or in law, or that it was arbitrary or capricious.
- (3) The appellant does not establish that the appeal was filed by a person aggrieved by the SMC action; or
- (4) The appellant has failed to meet its burden of proof as to why the SCM's decision should be reversed.

[Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §125C-22, 125C-23)

Appendix B (continued)

§15-10-29 Decision and actions. (a) Any appeal filed shall be acted upon by the SMC within fifteen days of the postmarked date of the appeal.

(b) Upon receipt of a letter of appeal, the SMC shall send a letter to the appellants acknowledging its receipt. The letter of appeal and any information submitted, with it shall be immediately scheduled for reconsideration. The SMC shall have three working days within which to reconsider the appealed decision. During this reconsideration process the SMC shall contact the appellant by telephone. The reconsideration shall result in the SMC:

- (1) Reversing its prior decision and granting the appellant all the fuel for which appellant has applied;
- (2) Granting an increase in the amount originally assigned, although the increase may be less than the amount originally requested; or
- (3) Affirming the prior decision.

(c) If the SCM reverses its prior decision and grants appellant the total amount of fuel originally requested, no further action is necessary other than notifying the appellant of the decision, and notifying the supplier to supply the appropriate amount of fuel.

(d) If the SMC grants appellant an increase in the amount of fuel, but the amount granted is less than the amount originally applied for, the appellant may accept the increased amount in satisfaction of the appeal, thereby ending the appeal, or the appellant may choose to request a review of the appeal by the Energy Resources Coordinator (ERC). In the latter case, the ERC will make an independent and final determination regarding the appeal.

(e) If the SMC affirms its initial decision, the ERC shall make an independent and final decision on the merits of the appeal if the appellant appeals from the SMC's affirmance of its prior decision.

(f) A decision of the ERC constitutes the final administrative remedy available to an applicant for set-aside supplies." [Eff FEB 17 1987] (Auth: HRS §125C-23) (Imp: HRS §§125C-22, 125C-23)


2. The adoption of chapter 15-10, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on FEB 17 1987, and filed with the Office of the Lieutenant Governor.

Appendix B (continued)


Roger A. Ulveling, Director
Department of Planning and
Economic Development

APPROVED AS TO FORM:


Deputy Attorney General