

4901:5-35-03

General procedures.

This rule establishes the procedures that govern application for assignment under the program.

(A) Who may apply.

A secondary supplier seeking an assignment from the program to meet an emergency requirement may apply for an assignment under the program.

(B) What to file.

Application for assignment from the program shall be by a form approved by the commission.

(C) Where to file.

All applications shall be filed with the docketing division of the commission.

(D) Notice.

The commission may notify any person that it determines may be aggrieved by the assignment, that comments regarding the application will be accepted.

(E) Contents.

The commission shall require that an applicant provide sufficient information so that it may be determined that the proposed allocation satisfies the objectives of section 4935.03 of the Revised Code. At a minimum, such information shall include, but not be limited to:

- (1) The identification of any previous assignment order from the program that was issued to the applicant or to any person that controls the applicant or is controlled by the applicant.
- (2) A statement that the applicant's primary supplier is unable to supply the applicant's requirements or, if the applicant does not have a primary supplier, a statement that the applicant has contacted two primary suppliers that could supply the allocated product and the identification of those suppliers.
- (3) For purposes of Chapter 4901:5-29 of the Administrative Code, a description of the consumers that will be supplied and their emergency requirements.

(F) Commission evaluation.

The commission may investigate any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The commission may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third party submissions.

- (1) In evaluating an application, the commission may consider any other source of information. The commission on its own initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.
- (2) If the commission determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the commission may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the commission may dismiss the application with prejudice.
- (3) There shall be assignment from the program only to secondary suppliers that are located within the state and that demonstrate emergency requirements.

(G) Decision and order.

Upon consideration of the application and other relevant information received or obtained during the proceeding, the commission's legal director, deputy legal director, or attorney examiner shall issue an order denying or granting the application.

- (1) The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued.
- (2) The order shall provide that any person aggrieved thereby may file an appeal with the commission in accordance with paragraph (I) of this rule. The order shall state that it is effective upon issuance and shall expire within ten days of its issuance unless the applicant presents the applicant's copy of the order to the primary supplier or a designated local representative of such primary supplier within that ten-day period.
- (3) The commission shall serve a copy of the order upon the applicant, the designated state representative of the primary or secondary supplier assigned to the applicant and any other person identified as one who might be aggrieved by said order.

(H) Timeliness.

- (1) If the commission's legal director, deputy legal director, or attorney examiner fails to take action on an application within ten days of filing, the applicant may treat

the application as having been denied in all respects and may appeal therefrom as provided in paragraph (I)(1) of this rule.

- (2) Notwithstanding paragraph (H)(1) of this rule, the commission may temporarily suspend the running of the ten-day period if it finds that additional information is necessary, if it finds that the application was improperly filed, or for any reason deemed appropriate. A temporary suspension shall remain in effect until the commission serves upon the applicant notice that the additional information has been received and accepted or that the application has been properly filed, or until such time as is specified by the commission, as appropriate. Unless otherwise provided by the commission, the ten-day period shall resume running on the first day that is not a Saturday, Sunday, or legal holiday and that follows the day on which the commission serves upon the person notice as provided in this rule.

(I) Appeal.

- (1) Any person aggrieved by an order issued by the commission's legal director, deputy legal director, or attorney examiner pursuant to this chapter, or by the denial of an application pursuant to paragraph (H)(1) of this rule may file an appeal to the commission.
- (2) Any person wishing to take an appeal must file an application for review with the commission within five days from the issuance of the order from which the appeal is being taken. An extension of time for the filing of an appeal may be granted only under extraordinary circumstances. Any appeal filed shall set forth specifically the legal and factual grounds serving as the basis of the appeal. A memorandum in support thereof may be filed by the appealing party. The appealing party shall serve a copy of the appeal on all primary and secondary suppliers affected by the order.
- (3) Any affected person may file a memorandum in support or in opposition to the appeal within three days after the filing of an appeal.
- (4) The commission shall affirm, reverse, or modify the decision of the commission's legal director, deputy legal director, or attorney examiner within ten days of the filing of the appeal.
- (5) Any person aggrieved by an order issued by the commission pursuant to the provisions of this chapter may file an appeal in accordance with Chapter 4903. of the Revised Code.

Five Year Review (FYR) Dates: 11/29/2017 and 11/29/2022

CERTIFIED ELECTRONICALLY

Certification

11/29/2017

Date

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| Promulgated Under: | 111.15 |
| Statutory Authority: | 4935.03 |
| Rule Amplifies: | 4935.03 |
| Prior Effective Dates: | 05/19/1991, 01/22/1998, 02/27/2010, 11/08/2012 |