**DRAFT EMERGENCY RULES FOR STATE PETROLEUM SET-ASIDE PROGRAM**

**Emergency Rules State Petroleum Set‐Aside Program**

These rules take effect upon filing with the [insert the name of the appropriate state agency should your state have a requirement for the filing of administrative rules].

By authority conferred on [insert state agency name], by the Governor upon the proclamation of an emergency and by Executive Order [insert number] on [insert month, day, year] under [insert full legal citation to the act and section of the act upon which this authority is based.].

**FINDING OF EMERGENCY**

By executive order the Governor has declared that a state of [energy] emergency exists. Under powers granted to the Governor during a declared state of energy emergency, Executive Order [insert number and year] was issued establishing a State Set-Aside Program. In this order, the Governor designated [insert state agency name] as the agency responsible for the administration of this program. Further, it required a mechanism to resolve any disputes arising out of the use of this plan. The following rules are intended to outline an appeals procedure that will provide this mechanism.

Delay in establishing rules of procedure to effectively carry out the duties delegated to the [insert state agency name] regarding the administration of the State Set-Aside Program might well constitute a threat to the citizens of the state due to the lack of petroleum products. To avoid this threat and to assure that essential public needs are met [insert state agency name] finds the following rules are needed for the preservation of public health, safety, and welfare and that an emergency exists within the meaning of [insert the legal reference to the state law and executive order under which it is to be implemented].

**Rule 1: Definitions**

1. As used in these rules:
	1. “Current requirements” means the supply of an allocated product needed by an end‐user or wholesale purchaser to meet its present supply requirement for one month.
	2. “State Office” means [insert state agency name].
	3. “Director” means the director of [insert state agency name], or the designee thereof, other than the director as defined in these rules.
	4. “Distillate fuel oil” means a general classification of one of the petroleum fractions produced in conventional distillation operations. It is used primarily for space heating, on- and off-highway diesel engine fuel (including railroad engine fuel and fuel for agricultural machinery), and electric power generation. Included are products known as Number 1 and Number 2 fuel oils; and diesel fuels as covered by ASTM specifications D396 and D975. It does not include kerosene type jet fuel.
	5. “End‐User” means any person who is an ultimate consumer of a petroleum product other than a wholesale purchaser‐consumer.
	6. “Motor gasoline” means any of the various grades of motor gasoline (premium, regular, or unleaded, including gasoline/alcohol mixtures such as gasohol), suitable for the operation of an internal combustion engine and defined under ASTM specification D439‐88.
	7. “Officer” means the fuel allocation officer authorized to sign orders and to authorize documents for the set‐aside assignments.
	8. “Order” means a written or oral directive followed by written confirmation issued by the officer with respect to state set‐aside assignments. It also means a written determination by the director relative to an appeal from an order of the officer.
	9. “Person” means an individual, corporation, firm, governmental unit, organization, or any other establishment whatsoever.
	10. “Prime Supplier” means the supplier or producer who makes the first sale of petroleum products into the state distribution system for consumption within the state.
	11. “Propane” means a normally gaseous paraffinic compound (C3H8), which includes all products covered by natural gas policy act specifications for commercial and HD‐5 propane and ASTM specification D1835. Excludes feedstock for propane, which is propane not classified as consumer grade propane, including the propane portion of any natural gas liquid mixtures such as butane‐propane mix.
	12. “Purchaser” means a wholesale purchaser or an end‐user, or both.
	13. “Retail” means any retail gasoline station, jobber or distributor which sells motor gasoline, propane and/or distillate fuel oil directly to an end‐user.
	14. “Service” means personal service or service by registered or certified United States mail, postage prepaid. Service upon a person’s duly authorized representative shall constitute service upon the person. Service by mail is complete upon mailing.
	15. “Set‐aside assignment” means an order directing a prime supplier to make a product from its state set‐aside available to a designated person.
	16. “State set‐aside” means, with respect to a particular prime supplier, that amount of the specified petroleum products (e.g., motor gasoline, propane or distillate fuel oil) that is made available from a percentage of the projected monthly sales by prime suppliers for utilization to resolve emergencies and hardships due to fuel shortages. The state set‐aside amount for a particular month is calculated by multiplying the state set‐aside percentage level by the projected monthly sales expected to be made in the upcoming month by the prime supplier’s prepared using a method consistent with the actual monthly sales made in the prior month as reported under Part 4 of the EIA‐782C, the Monthly Report of Prime Suppliers Sales of Petroleum Products Sold for Local Consumption, and filed by said supplier.
	17. “Supplier” means a firm or subsidiary of a firm, other than the United States Department of Defense, that presently or during the last 12 months, supplies, sells, transfers, or otherwise furnishes, such as by consignment, motor gasoline, propane and distillate fuel oil to wholesale purchasers or end‐users, including, but not limited to, refiners, importers, resellers, jobbers, or retailers.
	18. “Wholesale purchaser” means a wholesale purchaser‐reseller or a wholesale purchaser consumer.
	19. “Wholesale purchaser‐consumer” means an ultimate consumer that, as part of its normal operation, purchases or obtains petroleum products from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location.
	20. “Wholesale purchaser‐reseller” means a person who purchases, receives through transfer, or otherwise obtains, such as by consignment, motor gasoline, propane and distillate fuel oil and who resells or otherwise transfers it to other purchasers without substantially changing its form, excluding retailers.

**Rule 2: State Set‐Aside: Assignments; Eligibility; Criteria; Amounts; Application; Decision; Issuance; Order**

1. The following persons may apply for an assignment under the state set‐aside program:
	1. A wholesale purchaser‐consumer or an end‐user who seeks an assignment to meet the needs for any of the following uses due to a hardship or emergency, or other users in extenuating circumstances where a direct threat to the public’s health, safety, or welfare may exist. These include:
		1. Residential, institutional, and commercial space heating
		2. Agricultural producers and distributors of perishable food
		3. Emergency medical services
		4. Energy suppliers
		5. Firefighting units
		6. Law enforcement
		7. Public mass transportation, including school buses
		8. Sanitation services
		9. Snow removal
		10. Communications companies
		11. Utility crews
		12. Water and waste water supply and treatment
	2. An officer may order an assignment of an allocated product from the state set‐aside in circumstances involving hardship or emergency to those persons specified in sub-rule (1)(a). Such circumstances include either of the following:
		1. The person specified in sub-rule (1)(a) is undergoing curtailment of motor gasoline, propane, and distillate fuel oil for reasons beyond his or her control that are not a result of the inability to pay.
		2. The issuance of an assignment order is necessary to avoid, alleviate, or minimize a situation affecting the health, safety, or welfare of a person specified in sub-rule (1)(a).
2. An application for assignment under the state set‐aside shall be made by completing the appropriate form and filing it with the officer. The appropriate form should be made available by the [insert state agency name]. Each applicant shall certify by way of a sworn statement testifying to the truth and accuracy of the information contained in the application. The officer may accept an oral application when it is extremely impractical to require written application in order to avoid an emergency situation. Persons allowed to make an oral request for state set‐aside shall nevertheless file a completed form with the officer within five work days following acceptance of the oral request. A wholesale purchaser‐reseller who supplies petroleum products to a wholesale consumer, or purchaser‐reseller who supplies petroleum products to a wholesale consumer or end‐user outlet shall attach an addendum to their application identifying each person on whose behalf the wholesale purchaser‐reseller is requesting a set‐aside assignment, the location of each wholesale consumer and end‐user, the number of gallons requested for each, and provide verifying signatures.
3. Within fifteen (15) work days after receiving the application for state set‐aside, the officer shall issue an assignment order, or shall deny the request. In the case of a denial, the officer shall serve the applicant with a copy of the denial. The officer may consider any information deemed relevant in making the determination; the officer may postpone a decision and convene a conference. Should any applicant refuse to cooperate during an investigation, the officer may dismiss the application on those grounds alone.
4. Excluding exceptional cases, state set‐aside assignments shall be issued to the prime supplier from whom the applicant is normally supplied. If the set‐aside of a prime supplier is exhausted, the officer may issue assignments to alternate primer suppliers, or may split assignments between prime suppliers.
5. Upon approval of a state set‐aside assignment, the officer shall issue a written order authorizing the assignment and serve it on the prime supplier, or a designated local distributor of the prime supplier, from whose set‐aside the assigned product is to be drawn. Service of an order upon a prime supplier, or its local distributor, by the officer is deemed to be a submission on behalf of the applicant. An order issued by the officer under this section is effective upon issuance, unless stayed, modified, suspended, or rescinded, and represents a call on the prime supplier’s set‐aside volume for the month of issuance, even if delivery of the product cannot be made until the following month.

**Rule 3: State Set‐Aside: Appeals; Petition; Stay Order; Response; Decision**

1. A person aggrieved by an order of the officer pertaining to state set‐aside may file a written petition of appeal to the director not later than ten (10) work days after being served with an order of assignment or denial order. The petition shall include:
	1. The name and address of the petitioner.
	2. A concise statement of facts surrounding the case, including the reason for the appeal and relief sought.
	3. The names and addresses of persons known to petitioner who may be affected adversely by the outcome of the appeal. The petitioner shall attach a sworn statement to the petition stating the information provided in the petition is true to the best of the petitioner’s knowledge.
2. A written request for a stay of the assignment order pending outcome of appeal may be presented along with the petition. The stay order shall be granted only upon a finding that there is just cause to believe one of the following:
	1. In the absence of a stay order, petitioner will suffer irreparable harm.
	2. The objectives of the state set‐aside program will be frustrated, and the order of the officer should be reversed.
3. The director shall, within three work days after the filing of a petition, serve a copy of the petition on known persons who might be affected adversely by the outcome of the appeal. Persons served with a petition may, not later than five work days from service of the petition, file a written reply, supported by a sworn statement to the effect that the information in the reply is true to the best of the respondent’s knowledge. A copy of the response shall be made available to the petitioner.
4. Within 20 work days after the petition of appeal is filed, the director shall render a decision in the case and serve it upon all persons who participated in the appellate proceeding, and any other person who is aggrieved by the decision and order. A person is not deemed to have exhausted his or her administrative remedies unless that person has appealed under this rule and a decision has been rendered.