**DRAFT EMERGENCY RULES PROCEDURE AND APPEALS PROCESS**

These rules take effect upon filing with the [insert 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 Priority End-User 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 to 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 Priority End-User 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 motor gasoline, distillate fuel oil and propane needed by an end-user or wholesale purchaser to meet its present priority end-use needs.
	2. “Department” means the [insert state department name].
	3. “Designated Supplier” (See Supplier below).
	4. “Director” means the director of the [insert state agency name], or the designee thereof.
	5. “Distillate Fuel Oil” means a general classification for one of the petroleum fractions produced in conventional distillation operations. It includes diesel fuels and fuel oils. Products known as Number 1, Number 2, and Number 4 diesel fuel are used in on-highway diesel engines, such as those in trucks and automobiles, as well as off-highway engines, such as those in railroad locomotives and agricultural machinery. Products known as Number 1, Number 2, and Number 4 fuel oils are used primarily for space heating and electric power generation.
	6. “End-User” means any person who is an ultimate consumer of a petroleum product other than a wholesale purchaser-consumer.
	7. “Motor Gasoline” means a complex mixture of relatively volatile hydrocarbons with or without small quantities of additives, blended to form a fuel suitable for use in spark-ignition engines. Motor gasoline, as defined in ASTM Specification D 4814 or Federal Specification VV-G1690C, is characterized as having a boiling range of 122 to 158 degrees Fahrenheit at the 10-percent recovery point to 365 to 374 degrees Fahrenheit at the 90-percent recovery point. “Motor gasoline” includes conventional gasoline; all types of oxygenated gasoline, including gasohol; and reformulated gasoline; but excludes aviation gasoline.
	8. “Person” means an individual, corporation, firm, government unit, organization, or any other establishment whatsoever.
	9. “Propane, Consumer Grade” means a normally gaseous paraffinic compound (C3H8) that includes all products covered by Natural Gas Policy Act specifications for commercial use and HD-5 propane and ASTM Specification D 1835. It is a colorless paraffinic gas that boils at a temperature of -43.67 degrees Fahrenheit. It does not include the propane portion of any natural gas liquid mixes, e.g., butane-propane mix.
	10. “Supplier” means a firm, or a part or subsidiary of a firm (not including the U.S. Department of Defense) that presently or during the last 12 months supplies, sells, transfers, or otherwise furnishes, such as by consignment, motor gasoline, distillate oil and propane to wholesale purchasers or end-users, including but not limited to refiners, importers, resellers, jobbers, or retailers.

***Rule 2. Appeals: Petition; Stay Order; Response; Decision***

1. A person aggrieved by a certification of priority end-use may file a written petition of appeal to the [insert state name]. The petition shall include:
2. Name and address of the petitioner.
3. A concise statement of facts surrounding the case, including the reason for the appeal and relief sought.
4. 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 that states that the information provided in the petition is true to the best of the petitioner’s knowledge.
5. [Insert state agency name] 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.
6. Within 20 work days after the petition of appeal is filed, the [insert state agency name] shall render a decision on the appeal 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 deemed to have exhausted their administrative remedies once a decision has been rendered on the appeal.