

# *Michigan Petroleum Shortage Response Plan*



*Michigan Public Service Commission  
Department of Licensing and Regulatory Affairs*

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# Introduction

In response to the price and supply volatility caused by the Arab Oil Embargo of 1973, the Iranian revolution in 1979, and the deregulation of U.S. oil prices in 1981, the Energy Administration (which was later merged with the Michigan Public Service Commission), in conjunction with the Michigan Department of Transportation (MDOT) developed a Michigan Gasoline Shortage Response Plan. The plan, published in 1980 and updated in 1981, presented a series of options that could be considered if Michigan was faced with a serious gasoline shortage. These options contain measures designed both to manage limited supplies and to reduce overall demand.

The Michigan Public Service Commission (MPSC) along with representatives from the Michigan Departments of Transportation, Agriculture, State Police, and Technology, Management & Budget has been working to update this plan. The result of these efforts is the Petroleum Shortage Response Plan, a comprehensive set of demand and supply management measures which could be used in the event of a fuel disruption/shortage or a declared energy emergency.

The plan has also been expanded to include diesel, propane, and heating oil, and updated to better adapt to modern driving habits and conditions. The major changes to the response measures contained in the original plans involve the elimination of measures which were determined to be ineffective and/or obsolete due to societal, legal or technological changes. Other measures were consolidated to eliminate redundancy and to reflect the growth of programs which were relatively new at the drafting of the original plan (i.e., Carpooling, Vanpooling, and Flex-Time Scheduling Programs). Seven measures were removed entirely, including:

- Preferred Parking for State Employee Carpools,
- Reduction of Speed Limit,
- Extended Purchase Plan,
- Staggered Days of Operation,
- Switching Traffic Signals to Flashing Yellow,
- Tourist Gasoline Availability Program, and
- Use School Buses for Public Transportation.

The resulting plan contains a concise representation of shortage response measures which have been edited and reviewed by representatives of five state departments. In the event of a serious fuel shortage/supply disruption or a declared energy emergency, these measures will represent a list of reasonable and effective response options to mitigate the effects on the public and to help stabilize the situation. These measures can also be found in the Michigan Energy Assurance Plan as Appendix H.

## Michigan Petroleum System Overview

Michigan relies on petroleum products (gasoline, diesel, propane) to meet nearly one-third of its energy needs. Both gasoline and diesel fuels are used predominately on highways, with only small amounts used for other purposes. The single largest use of gasoline is for commuting to and from work. It is estimated that 83 percent of drivers commute alone and less than 10 percent decide to carpool. Although gasoline demand has been on the decline in Michigan for almost ten years, residents drove an average of 267 million miles per day in 2010 with a per capita motor fuel use of 544 gallons per year. This per capita usage is slightly less than that of neighboring states like Ohio, Indiana and Wisconsin, but greater than Illinois. Diesel fuel is also an extremely important transportation fuel with 991 million gallons consumed in 2011, primarily by highway truck travel.

In addition to transportation, fuel availability for space heating is critical due to the State's often severe and prolonged winters. In areas where natural gas pipelines are unavailable, heating oil or propane is the predominate fuel. Heating oil maintains a relatively small portion of the market share at less than one percent, while propane has a significant market share with about 9 percent of residential households using it as their primary heating according to the U.S. Census Bureau. This is the highest residential propane usage of any state in the country.

As result of this significant petroleum demand, it is important that the State maintain an adequate and reliable supply of crude oil and petroleum products. Michigan's petroleum supply is somewhat diversified with large amounts of crude oil imported from Canada and the Gulf Coast supplemented by some minor in-state production. Crude oil and refined petroleum products (i.e., gasoline, diesel, kerosene, etc.) are primarily transported by pipelines due to the increased safety and cost effectiveness. Once the crude oil has been refined, several petroleum product pipelines are used to transport the product to Michigan's Lower Peninsula markets. The Wolverine and BP Amoco pipelines run from Chicago area refineries to the Detroit area. In addition, the Buckeye system runs north into Michigan from refineries in Toledo and other parts of Ohio. These pipelines serve high population regions in Southeastern and Central Lower Michigan (See map on page 4).

Name	Company	City	State	Capacity (bbls/day)
Marathon	Marathon Petroleum Co LLC	Detroit	Michigan	120,000
BP-Huskey	BP-Huskey Refining LLC	Oregon	Ohio	160,000
Sunoco	Sunoco Inc.	Toledo	Ohio	140,000
BP Whiting	BP-Products North America	Whiting	Indiana	413,000
Exxon Joliet	Exxon Mobil Corp.	Joliet	Illinois	250,000
Citgo Lemont	Citgo Petroleum Corp.	Lemont	Illinois	167,000

Michigan's only refinery is located in Detroit, owned and operated by Marathon Petroleum Company LP. The refinery was recently upgraded to increase capacity and to allow it to

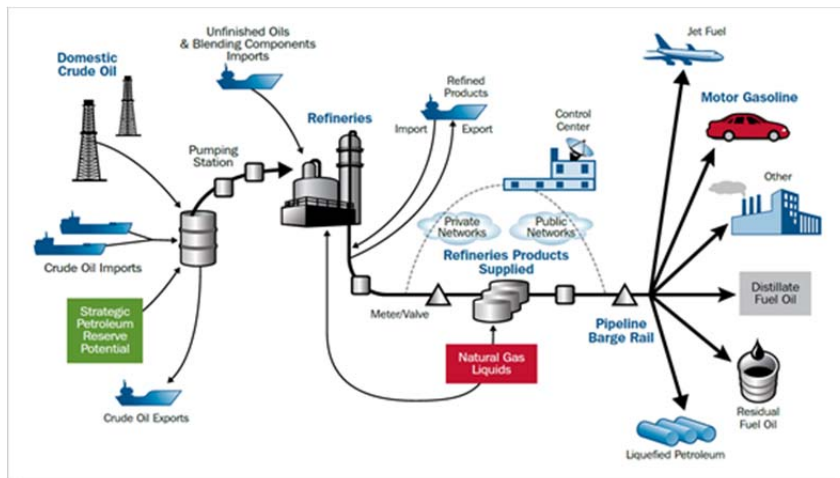
process heavier and less expensive crude oil imported from Canada via the Enbridge Pipeline system. It has the capacity to process 120,000 barrels of crude oil per day which is equivalent to roughly 18 percent of the State’s daily petroleum consumption. Thus, the majority of the refined petroleum products used in Michigan are produced at refineries elsewhere, such as Ohio, Indiana and Illinois.

Of the crude oil refined by the Marathon Refinery, approximately 50 percent of the output is gasoline, 28 percent diesel, and a small percentage is propane. A 42-U.S. gallon barrel of crude oil provides about 45 gallons of petroleum products including: gasoline, diesel, jet fuel, propane and other products.

After shipment through pipelines to local bulk storage terminals, gasoline and other petroleum products are typically held in bulk containers that service many companies. Products are then loaded into tanker trucks destined for wholesale or retail outlets. The tanker trucks, which can typically hold up to 10,000 gallons, usually have several compartments enabling them to transport different grades of gasoline or petroleum products. In 2013, there were 4,722 gasoline fueling stations in the State of Michigan.



In contrast to liquid petroleum fuels, propane may be sourced from natural gas processing as well as from refinery operations. The propane is then transported predominately via rail or pipeline and stored in underground caverns or large above-ground tank farms. It is then transported by truck to end users. These tank trucks, called “bobtails,” deliver propane to large storage tanks that are outside homes.



The average residential propane tank holds about 500 gallons of liquid fuel, and is refilled multiple times a year.

In terms of an energy emergency, knowledge of the petroleum infrastructure and distribution systems within the state is key to developing the most

effective response. In recent years, the trend has been toward a “just-in-time” approach to motor fuel inventories, so relying on available back-up supplies is usually not an option. Severe damage to pipelines or refineries could lead to shortages within days and could trigger one or more of the voluntary or mandatory measures described in the following plan.

# MICHIGAN OIL PIPE LINE MAP

PUBLIC SERVICE COMMISSION

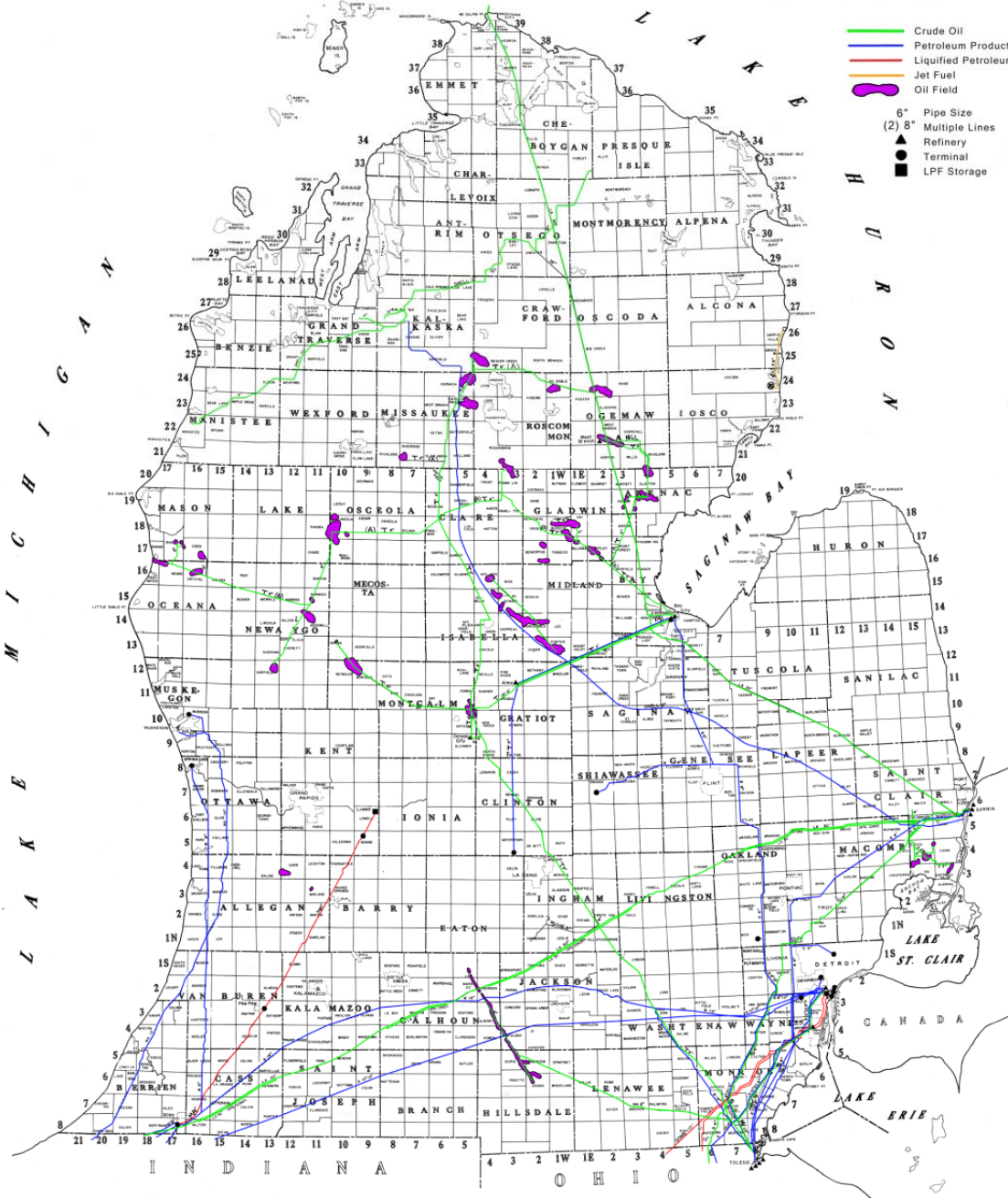


## Legend

- A Amoco Pipeline Company
- B Buckeye Pipeline Company
- C Crystal Pipeline Company
- D Bay Refining Div. Dow Chemical Co. (A)
- M Dome Pipeline Company
- E Ottawa Equipment Company
- LA Lakehead Pipeline Company
- MA Marathon Pipeline Company Inc.
- MV Mid Valley Pipeline Company
- NA National Pipeline Company (A)
- N Northern Michigan Pipeline Company (A)
- O Osceola Pipeline Company (A)
- SH Shell Pipeline Company
- S Sun Pipeline Company
- T Total Pipeline Company
- W Wolverine Pipeline Company

Note: (A) - Temporarily Abandoned

- Crude Oil
- Petroleum Products
- Liquefied Petroleum Gas (LPG)
- Jet Fuel
- Oil Field
- 6" Pipe Size
- (2) 8" Multiple Lines
- ▲ Refinery
- Terminal
- LPF Storage



# Supply Management Measures

Supply management measures are programs designed to respond to petroleum distribution problems by managing available supplies or their distribution to the public in a time of shortage. The efficacy of supply-side measures is limited and therefore should only be employed in response to the particular problems they are designed to prevent or solve. If a rapid rise in price during a shortage caused a major drop in demand, supply management measures would be unnecessary and should not be used. However, if in a severe shortage, essential public services such as police and fire had their supply cut off because of their inability to compete for limited supplies, some of these programs should be considered. The principal focus of these efforts is to minimize the impacts of a shortage on essential services.

It is extremely important that local governments have the capacity to deal with a shortage by assuring that critical services are maintained. A fuel shortage would have to be sufficiently severe and widespread to warrant the Governor's declaration of an energy emergency and initiation of state plans. Further, these plans address only supply availability and do not deal with price. In a free market, the rapid increase in price due to a shortage could leave inadequate funds to purchase the required amount of fuel within a local government's budget.

## ***Set-Aside Programs***

The State Set-Aside and Release of State Set-Aside measures outlined in this plan are based on programs that existed under the Federal Allocation Program between 1974 and 1981. These programs have two main applications. The first is to meet hardship needs of bulk purchasers<sup>1</sup>. If supplies become limited, the program would most likely be used to meet the needs of this group first. The second use would be as the release of a specified quantity of petroleum product from the set-aside to a part of the state experiencing a severe shortage. In this case, the additional supply could be directed to distributors (e.g., retail fueling stations) and made available to the general public.

If the Release of State Set-Aside was not successful at reducing lines at retail fueling stations, the Minimum or Odd/Even Purchase Plan(s) could also be considered. The Minimum Purchase Plan reduces tank topping (i.e., motorists not letting their gasoline tanks get below half) and would be needed particularly in urban and suburban areas. The Odd/Even plan seeks to deal with lines once they have occurred by reducing by one-half the number of vehicles eligible to purchase gasoline on any single day.

## ***Essential and Priority Needs***

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<sup>1</sup> Bulk purchasers are individuals with larger fuel needs (i.e., 50 to 100 thousand gallons), such as small farmers, bus companies, delivery services, and manufacturers, that own petroleum tanks and rely on truck deliveries to fill them up.



The priority end-user plan specifically provides for two types of users. The first is police, fire protection, and emergency medical services. Under the priority end-user measure, these users would be eligible for 100 percent of their current requirements. These users would also be eligible for set-aside while they were awaiting certification of priority use from their supplier.

The second group of essential service providers eligible for assistance is:

- A. Agricultural producers and distributors of perishable food,
- B. Energy suppliers,
- C. Public mass transportation including school buses,
- D. Sanitation services,
- E. Snow removal,
- F. Telecommunications companies,
- G. Utility crews, and
- H. Waste water and water treatment.

This group would be expected to increase the efficiency of fuel use and manage operations on limited supplies available through ordinary channels. If for some reason the shortage went beyond their ability to manage it, the state could provide assistance.

### ***Waivers***

In addition to Set-Aside Programs, further actions can and have been initiated in coordination with the federal government. These measures are involved with easing the federal regulatory mandates which would inhibit petroleum product distribution during a shortage. First, is a temporary waiver of driver safety regulations under rules promulgated by the Federal Motor Carrier Safety Administration (FMCSA), and second, are environmental fuel waivers issued by the Environmental Protection Agency (EPA) for motor gasoline or distillate (diesel) fuel. Granting waivers requires a strong demonstration of need and/or a declaration of energy emergency. While they can be enacted at no cost, they do require collaboration between state departments and ultimately can only be granted by the federal government unless there is a declared energy emergency.

Both driver safety and air quality waivers were used during the August 2003 blackout and in response to the petroleum supply disruption caused by Hurricane Katrina in the fall of 2005. In addition, use of dyed diesel fuel was also waived in the fall of 2005. In both of these events the Governor declared an Energy Emergency under Public Act 191 and then issued executive orders to initiate the actions.

# State Set-Aside Program

## *Description*

The Governor would establish a State Set-Aside Program by Executive Order upon declaration of an emergency and authorize the Michigan Public Service Commission (MPSC) to operate the program. This measure would require that each major oil company operating in the state set-aside up to three percent of the total anticipated supply of gasoline and diesel fuel, propane and heating oil, if needed, each month. The MPSC would be authorized to direct the sale of this reserve to bulk purchasers who demonstrate that they needed the product to perform essential public services.

## *Intent of Measure*

The State Set-Aside Program is designed to provide additional supplies of motor fuel to bulk users experiencing an emergency or severe hardship caused by a shortage. The program provides a mechanism for maintaining essential services by providing motor fuel supplies to meet the emergency needs of the following users:

- A. Agricultural producers and distributors of perishable food,
- B. Emergency medical services,
- C. Energy suppliers,
- D. Firefighting units,
- E. Law enforcement,
- F. Public mass transportation, including school buses,
- G. Sanitation services,
- H. Snow removal,
- I. Communications companies,
- J. Utility crews, and
- K. Waste water and water treatment.

## *Conditions Under Which The Measure May Be Used*

The Set-Aside Program could be used after the Governor declared an energy emergency under Public Act 191 of 1982. The decision to implement the Set-Aside Program will depend, in large part, on whether the market will provide bulk users with sufficient gasoline supplies to maintain essential services. During a petroleum shortage, the MPSC's Energy Emergency Center (EEC) will monitor gasoline supplies and demand through contact with major oil company representatives and other appropriate sources. The Set-Aside Program would be implemented when two conditions existed. First, refiners would be unable to supply their accounts with adequate gasoline supplies, limiting them to a percentage of their historical purchases or contractual volumes. Second, essential public services would either be interrupted or threatened due to inadequate supplies and the problem would be expected to last for several months. Thus, the Set-Aside could provide a

temporary solution until the shortage abated and supplies for essential services returned to normal.

### ***Legal Authority***

Section 4 of Public Act 191 of 1982, authorizes the Governor to both restrict the conditions under which energy resources may be sold to consumers and direct an energy resource supplier to provide an energy resource to any person or facility which provides services essential to the health, safety, and welfare of Michigan residents.

The Governor, after declaration of an energy emergency, will issue an Executive Order directing each major oil company operating in the state to establish a Set-Aside Program and appoint an individual within the company to act as principal contact for the state in administration of the program. The MPSC will promulgate emergency administrative rules and procedures governing the eligibility of applicants. This order and administrative rules will also provide the legal basis for the Release of Set-Aside Program.

Legal Constraints – State cross-branding laws limit the flexibility of emergency releases of motor fuel. Law suits could be filed by distributors claiming a market advantage has been provided to competitors by increasing their supply through the Set-Aside.

### ***Implementation***

Start-Up Procedures –

1. The Governor will issue an Executive Order establishing the Set-Aside Program, and direct the MPSC, Michigan Department of Licensing and Regulatory Affairs, to administer the program.
2. The Governor will immediately notify representatives of all major oil companies operating in the State that the Set-Aside Program will be put into operation. Each company will be asked to appoint a company representative to act for and on behalf of the company for administration of the program. Within five days, each company will then provide the MPSC with the name and telephone number of the appointed representative. A package of information including the Executive Order, a copy of the application, and administrative rules will be provided to each major oil company and petroleum jobber.
3. The State Set-Aside volume shall be based on the total anticipated supply to be made available to the State's distribution system for consumption within the state. The Prime Supplier's Monthly Report EIA-782 will serve as the source of this information which, if unavailable, shall be directly collected on a comparable state report.
4. The MPSC call center and toll free number will be used to handle calls related to the emergency and forwarded to the Energy Data and Security section. Online submissions using fillable forms on the MPSC website could also be used. Lead time – approximately three days.

5. A press release will be prepared for the Governor notifying the public that a Set-Aside Program will be put into operation. The release will contain the MPSC toll free number and indicate where the public may receive more detailed information and set-aside applications.

Operations – Eligible applicants will contact the MPSC to receive an application (unless the situation is extremely critical, in which case a telephone release may be made and a follow up application would be returned by the applicant to the MPSC within one week). Upon receipt of the application for emergency assistance, the MPSC will investigate, verify, and evaluate each for eligibility. To facilitate relief for these users, jobbers and distributors may submit an application if they specifically detail and obtain signed documents stating the emergency needs of each end-user. Applicants must certify that all information contained on the application is true and accurate. Spot checks will be conducted to assure releases are made only for legitimate needs and are not stockpiled or resold. Any applicant who has knowingly provided false information will be subject to penalties provided for in Public Act 191 of 1982.

Prime suppliers will be notified in writing and by telephone or email of those applicants to which a release of fuel should be made. Applicants will be notified of approval or denial of their application. Applicants who have been denied will be advised of their right to appeal to the Chairman of the MPSC. The case and the appeal will be reviewed and a decision rendered by the Chairman within 20 days.

Evaluation – A follow up survey of randomly chosen set-aside applicants could be conducted to assess program responsiveness. The survey should request information on the number of calls necessary to reach the MPSC, the number of days the applicant waited before the case was resolved, the number of days the applicant was without fuel, etc. Records of calls received and applications processed will also be maintained.

### ***Cost of Implementation and Operations***

Start-up and operational costs would include any additional equipment or staff needed for a period of approximately 90 days. Existing staff would be utilized first, but additional case resolution officers, allocation officers and clerical positions may be necessary. Travel expenses would also be provided for enforcement of on-site checks to resolve applicants' issues.

### ***Advantages***

1. Quickly moves motor fuel to end-users to meet emergency or hardship requirements.
2. This is a program that has been used in past energy emergencies and proven effective; the operation is understood by oil companies.

### ***Disadvantages***

1. Potential for abuse by applicants seeking emergency or hardship requirements where these conditions do not exist.
2. Difficulty in verification of information provided for evaluation.
3. Does not address the capability of an essential user to cover the cost of the fuel to be purchased under the set-aside authorization.

### ***Support Documents***

- A. Energy Emergency Act – PA 191
- B. EO – Establishment of State Set-Aside
- C. State Set Aside Emergency Rules
- D. Application for State Set Aside

# **Release of State Set-Aside**

## ***Description***

A State Set-Aside Program requires suppliers to reserve up to three percent of the total petroleum supply available to the Michigan market. The state may direct major oil companies to distribute additional petroleum supplies from this set-aside reserve in response to shortages. Under this measure, the Chairman of the MPSC would release all or a portion of the State Set-Aside to retail fueling stations in a specific area of the state suffering a supply imbalance. An “area” would be defined as a county, a group of counties, municipalities, or Standard Metropolitan Statistical Area (SMSA). This program would only be used in conjunction with the State Set-Aside Program.

## ***Intent of Measure***

The purpose of this action would be to increase the available supply to retail fuel stations, propane distributors, etc., in a market or geographic area where disproportionate shortages were being experienced.

## ***Conditions Under Which the Measure May be Used***

There are two basic conditions under which the measure might be used. The first would be when shifts in the demand for gasoline occurred during a shortage, which did not follow oil companies’ distribution of supplies. This could happen in a shortage when gasoline suppliers institute their own internal allocation program which limits supplies to a percentage of historical or contractual purchases. The second condition would occur when a group of major suppliers to an area of the state experienced a greater short-fall of gasoline than suppliers who provided gasoline to other parts of the state. The results of either of these events would be the reduction in stations’ hours of operation and the prospects of lengthy lines of cars at retail stations.

## ***Legal Authority***

This action could be initiated by the MPSC Chairman under authority contained in the Executive Order establishing a State Set-Aside and administrative rules governing its use during a declared State of Energy Emergency (Public Act 191 of 1982).

Legal Constraints – It would be difficult to ensure that the distribution from each supplier was handled in an equitable manner. Each company involved will have a different means of allocating supplies in a shortage in the absence of a federal allocation program.

## ***Implementation***

Start-Up Procedures – The MPSC Chairman, upon assessment of the state’s supply situation, may designate a county, a group of counties, a municipality, or a SMSA as a “shortage” area based on any or all of the following general guidelines.

1. Increase in demand in the area due to recent economic development and changes in driving patterns which are not matched by the allocations of gasoline to the area.
2. Widespread occurrence of lines at retail locations along with a significant reduction in retail gasoline stations' operation hours.
3. Determination that supplies for the area are substantially below the state average, based on marketing data of the major oil companies and jobber/distributors.

Operations – Upon designation of a shortage area, the MPSC will order some or all of the prime suppliers (major oil companies) with purchasers in the affected area to release part or all of their set-aside volumes through their normal distribution system to increase the allocation of all the retail gasoline stations which they supply located within such areas. The order will be in writing and effective immediately upon presentation to the prime supplier's designated state representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month. A recommendation of the prime suppliers to be effected and the amount of fuel involved would be developed by the MPSC in consultation with the affected companies. These supplies would be in addition to any supplies the affected area would normally be entitled to.

Evaluation – Each company covered by this order would be required to submit a brief narrative detailing the time and effort involved to distribute the additional fuel. This would be due to the MPSC within ten days following a set-aside order issued for this purpose.

### ***Cost of Implementation and Operations***

This action would be implemented with resources budgeted under the set-aside program. Minimum lead time required is one week. This would include preparation of the order, assurance of compliance among the prime suppliers, and responding to any questions which this action may raise.

### ***Advantages***

1. This action could quickly move supplies into an area experiencing a shortage.
2. It is accomplished not by taking supplies away from other areas of the state, but rather allocating supplies which have been withheld from the market.
3. Additional supplies of fuel would be made available directly to the general public.

### ***Disadvantages***

1. This action may limit the ability of the state to respond to any critical emergencies which may occur elsewhere in the state after a mass release was made.
2. Inadequate volumes of fuel in the Set-Aside may limit the effectiveness of this action.

### ***Support Documents***

- E. Authorization for Release of State Set-Aside

# Priority End-User Plan

## *Description*

The Priority End-User Plan requires suppliers to provide priority end-users (police, fire fighting and emergency medical services, etc.) with 100 percent of their current motor fuel requirements upon certification to their suppliers of the quantity needed to maintain their operation.

## *Intent of Measure*

The Priority End-User Program is designed to guarantee that necessary supplies of motor fuel are available for users essential to ensure the health, safety, and welfare of the general public. The priority end-user plan specifically provides for two types of users. The first is police, fire protection, and emergency medical services. Under the priority end-user measure, these users would be eligible for 100 percent of their current requirements. These users would also be eligible for set-aside while they were awaiting certification of priority use from their supplier.

The second group of essential service providers eligible for assistance is:

- A. Agricultural producers and distributors of perishable food,
- B. Energy suppliers,
- C. Public mass transportation including school buses,
- D. Sanitation services,
- E. Snow removal,
- F. Telecommunications companies,
- G. Utility crews, and
- H. Waste water and water treatment.

This group would be expected to increase the efficiency of fuel use and manage operations on limited supplies available through ordinary channels. If for some reason the shortage went beyond their ability to manage it, the state could provide assistance.

## *Conditions Under Which The Measure May Be Used*

The Priority End-User Plan could be used after the Governor declared an energy emergency under Public Act 191 of 1982. The decision to implement the plan will depend on whether priority end-users are receiving sufficient amounts of fuel to maintain essential public services. The plan would be implemented when two conditions existed. First, refiners would be unable to supply their customers with adequate fuel supplies, and would limit them to a percentage of their historical purchases or contractual volumes. Second, the operation of essential public services would either be interrupted or threatened due to inadequate fuel supplies.



## ***Legal Authority***

Section 4 of Public Act 191 of 1982, authorizes the Governor to both restrict the conditions under which energy resources may be sold to consumers and direct an energy resource supplier to provide an energy resource to any person or facility which provides services essential to the health, safety and welfare of Michigan residents. The Governor will issue an Executive Order which will establish a priority end-user plan. The Michigan Public Service Commission (MPSC) will provide for resolution of disputes arising from this order.

Legal Constraints—by requiring that suppliers provide current requirements, priority users may request volumes in excess of contractual arrangements which could be challenged.

## ***Implementation***

### Start-Up Procedures—

1. The Governor will issue an Executive Order establishing a Priority End-User Program.
2. The Governor will notify the representatives of all major oil companies operating in Michigan of the Priority End-User Program. Each company will be asked to designate a company representative and develop procedures for processing certification applications. An information package containing the Executive Order, a certification application, and all regulations pertaining to the program will be sent to each major oil company operating in Michigan and local governments.
3. The MPSC will prepare a press release for the Governor notifying the public that a Priority End-User Program will be put into operation.
4. A unit would be established within the MPSC to handle inquiries, complaints, and resolve any disputes.

### Operations—

1. Priority end-users will certify their current requirements to their suppliers which, if a jobber, can recertify to their supplier.
2. This certification can be in letter form or on forms provided by the state
3. The certification shall include:
  - a. The name, business address, phone number, and contact-person for user.
  - b. The essential uses for which the fuel will be employed by: police agencies, firefighting units, and emergency medical services.
  - c. The name, address, phone number, and contact-individual of their supplier(s).
  - d. The on-site storage capacity (only bulk purchasers are eligible for the program).

- e. The last 12-months' purchases from the supplier to whom the certification is being made.
  - f. The anticipated monthly requirements for the next 12 months.
  - g. If volumes are requested in excess of prior year's purchases, a written justification for increase must be included.
  - h. A sworn statement testifying to the truth and accuracy of the above information.
4. Suppliers will have 30 days, upon submission of the certification, to begin to supply priority users with the required amounts of gasoline.
  5. Certification by priority end-users to jobbers and distributors shall be forwarded to their prime supplier who will provide the additional supplies of gasoline to that distributor to meet the needs of their priority accounts.
  6. Any dispute should be directed to the MPSC for resolution. This can include both appeals from a priority user or a supplier challenging a certification.
  7. Pending certification, priority users as defined in this plan, shall be eligible for additional supplies from the State Set-Aside.

Evaluation – Following discontinuance of this program, major oil companies will be required to submit a report of the MPSC detailing their operations under the program.

### ***Cost of Implementation and Operations***

The only cost associated with this measure would be that of staffing cost to respond to problems and questions.

### ***Advantages***

1. The priority end-user plan would ensure the availability of adequate supplies of gasoline to maintain essential emergency services.
2. The plan could be quickly implemented.

### ***Disadvantages***

1. Disputes may arise between suppliers and priority users which would delay the delivery of gasoline.
2. Priority users could abuse the plan by diverting some of the gasoline for non-priority use.

### ***Support Documents***

- F. EO – Implementation of Priority End-User Plan
- G. Priority End-User Plan Appeals Procedure
- H. Certificate of Priority End-Use

# Minimum Purchase & Odd/Even Purchase Plan

## *Description*

This plan consists of two parts: (1) a minimum purchase plan which could be used alone, and (2) an odd/even plan which must be used in conjunction with the minimum purchase requirements. This minimum purchase plan requires motorists to purchase a minimum amount of gasoline/diesel or forfeit to the retailer the difference between their purchase and the minimum. In the Odd/Even Plan, motorists with odd number vehicle license plates could only purchase gasoline on a day when the day's date was odd. Drivers of vehicles with even numbered plates could only purchase gasoline on even numbered days. Certain emergency and essential users along with non-Michigan residents would be exempt.

## *Intent of Measures*

The intent of this plan is to minimize tank topping in an effort to prevent or eliminate lines of vehicles waiting to purchase motor fuel and to increase fuel supply. A penalty would be imposed on any driver who purchases less than the required amount. During a period of energy emergency, tank topping removes valuable fuel off the market and encourages hoarding behavior. When drivers are provided an incentive to refill their tanks only when necessary, motor fuel will be more equitably distributed, allowing all citizens the opportunity to refuel. The Odd/Even Plan attempts to deal with lines once they have occurred by reducing by one-half the number of vehicles eligible to purchase gasoline on any single day.<sup>2</sup>

If each of the drivers of Michigan's 5.1 million registered automobiles increased the average volume of gasoline in their vehicle's tank by four gallons (as owners do when they top off their tanks), an additional 20.4 million gallons (17.4 percent of the state's average monthly usage) would be required.

## *Condition Under Which This Measure Might Be Used*

This measure would be used when significant lines of vehicles either develop at retail fueling stations or when conditions exist which would make them likely. Pre-conditions for the development of lines would include a shortage of motor fuel supplies resulting in significant declines of the average hours of operation by retail gasoline station owners. Lines are most likely in urban and suburban areas as people stay closer to home. Therefore, this plan would probably be implemented first in urban areas. It is unlikely that this measure would be needed or used in the State's rural areas.

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<sup>2</sup> Research and Innovative Technology Administration Bureau of Transportation Statistics  
<http://gis.rita.dot.gov/StateFacts/StateFacts.aspx?StateName=Michigan>

## ***Legal Authority***

The Governor would authorize this measure by issuing an Executive Order under authority contained in Public Act 191 of 1982. Section 4(a) (iii), states that the Governor may place “restrictions on the conditions under which energy resources may be sold to consumers.”

Legal Constraints – Enforcement and prosecution could prove difficult in absence of public acceptance of the program.

## ***Implementation***

Start-Up Procedures –

1. The Governor would sign the Executive Order implementing the program which would be filled with the Secretary of State and the Department of State Police.
2. A press release would be issued indicating when and where the program would be put into effect and indicating how the program would work.
3. Copies of the Executive Order would be printed and mailed or disseminated electronically to all petroleum stations/oil companies, and county and local governments in the designated area.
4. The MPSC call center would be used to handle inquiries, complaints, and resolve any disputes. Possible violations would be referred to the county or local police. The MPSC website and other social media methods could be utilized to handle public inquiries and complaints. All public announcements would be managed by the JIC.

Operations – Response and follow-up by the MPSC to questions or complaints on the program.

Evaluation – The plan’s effectiveness would be monitored in two ways: (1) service stations would be randomly polled to determine if problems were occurring as a result of the program; and (2) records would be maintained on problems reported to the MPSC, including complaints by consumers and retailers. Following the discontinuation of this program, an evaluation report summarizing the above measures will be prepared.

## ***Costs of Implementation and Operations***

Implementation state-wide would include staff time required to distribute copies of the Executive Order, through e-mail and postal mail. The MPSC maintains a customer call-center, so little beyond staff education and training will need to occur to handle incoming inquiries and complaints. State and Local law enforcement may be requested to provide support to participating fueling stations if customers become unruly or disruptive.

### ***Advantages***

1. Quick implementation, relatively low costs.
2. The program is generally understood by the public.
3. Minimum purchase can be effective in reducing tank topping and avoiding lines and can be implemented anywhere in the state.

### ***Disadvantages***

1. Retail operations may have difficulty programming electronic fuel dispensers for a minimum purchase.
2. Program effectiveness relies on public and retail gasoline station operators' cooperation.
3. Retail operations may have difficulty in identifying a commercial or exempted vehicle.
4. Does not provide an effective means of control for miscellaneous fuel purchases.

### ***Support Documents***

- I. EO – Implementation of Minimum Purchase Plan
- J. EO – Implementation of Odd/Even Purchase Plan

# Environmental Fuel Waivers

## *Description*

In the event of a fuel supply emergency, the Environmental Protection Agency (EPA), with the concurrence of the Department of Energy (DOE), may temporarily waive a fuel or fuel additive requirement if doing so will alleviate the fuel supply emergency. Fuel waivers may apply to both gasoline and diesel fuel. A typical use of a waiver may involve shifting fuel use between geographic areas. For example, a fuel waiver may allow the use of higher volatility gasoline from rural areas of the state to address a fuel supply shortage in urban areas such as Detroit<sup>3</sup>. Similarly, a waiver of the summer volatility requirements could allow winter grade gasoline to be used during a summer high ozone season if refining capacity has been significantly degraded.

## *Intent of Measure*

Disruptions can be caused by a number of situations including refinery or pipeline infrastructure damage as the result of natural disasters or equipment failure.

Temporary fuel waivers are intended to help ensure that an adequate supply of fuel is available, particularly for emergency vehicle needs. If the fuel waiver criteria have been met, the EPA may waive time and type fuel restrictions for a designated area and period of time. This provides petroleum suppliers with added supply flexibility during a shortage.

In 2005, Hurricane Katrina destroyed a number of oil and natural gas facilities in the Gulf of Mexico causing price and supply ramifications for Michigan. Governor Granholm declared a State of Energy Emergency followed by two Executive Orders that waived Hours of Service requirements for drivers of transportation fuels and also waived the federal rules on the environmental specifications for summer grade gasoline.

[Energy Emergency – EO 2005-16](#)

[FMCSA Waiver – EO 2005-17](#)

[Vapor Pressure Waiver – EO 2005-18](#)

## *Conditions Under which this Measure May be Used*

Fuel or fuel additive requirements may be temporarily waived if doing so will alleviate a fuel supply emergency or shortage. “Spot” or localized shortages generally are not fuel supply disruptions for which a waiver may be issued nor are events that could have been reasonably foreseen or prevented and are a result of a lack of prudent planning on the part of the suppliers of the fuel or fuel additive. A fuel supply disruption that meets the criteria for a waiver must be one that results in a generalized supply emergency for which access to alternative fuel types in the marketplace will provide relief.

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<sup>3</sup> Reformulated gasoline contains a lower Reid Vapor Pressure (RVP) to control the emissions of volatile organic compounds (VOC). It is only required during the high ozone season (in Detroit this period is from June 1<sup>st</sup> through September 15<sup>th</sup>) and applies to gasoline refineries, importers, distributors, resellers, carriers, retailers, and wholesale purchaser-consumers

## ***Legal Authority***

A fuel waiver can be issued only when the criteria specified in the Clean Air Act Section 211(c)(4)(C) have been met. In general, these criteria allow a fuel waiver to address only a temporary emergency fuel supply shortage existing throughout a state or region. This shortage must be caused by an unusual situation and be unavoidable through prudent planning.

## ***Implementation***

If fuel waivers are under consideration in Michigan, it is important to ensure coordination between all necessary state agencies. The MPSC would work with the Michigan Department of Environmental Quality (DEQ) and the Michigan Department of Agriculture and Rural Development (MDARD) to request a fuel waiver from the US Environmental Protection Agency (EPA). The EPA works closely with state officials especially during emergencies.

In emergency circumstances, a formal request for a fuel waiver is made to the EPA by, or on behalf of, the Governor after consultation with the DEQ and MDARD.. During normal business hours (Monday through Friday, 8 am to 5 pm Eastern Time) the first point of contact for obtaining information about a fuel waiver request is the EPA Air Enforcement Division, at (202) 564-2260, or the Transportation and Regional Programs Division, at (734) 214-4956. Outside of normal business hours, the point of contact is the EPA Emergency Operations Center, at (202) 564-3850, which is able to communicate with the EPA officials who provide assistance regarding fuel waiver requests.

Source Document: Frequently asked questions on Fuel Waivers<sup>4</sup>

## ***Cost of Implementation and Operation***

There is no cost associated with this measure.

## ***Fuel Savings***

This measure would not generate fuel savings.

## ***Advantages***

1. In applicable situations, a waiver would be an effective, low cost method to alleviate supply shortages during summer months.
2. Additional gasoline supplies may help mitigate price increases from the supply shortage.
3. Does not require sacrifice on the part of the public.

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<sup>4</sup> Fuel Waiver FAQs: <http://www2.epa.gov/enforcement/fuel-waivers>

### ***Disadvantages***

1. Gasoline volatility standards are necessary to control the emissions of volatile organic compounds (VOC), which contributes to ozone pollution. Fuels waivers that allow use of gasoline with higher volatility may result in increased VOC emissions.
2. Could possibly be used as an excuse by refiners to save money by avoiding the purchase of more expensive reformulated gasoline.
3. Its effectiveness is limited to specific circumstances where an easing of EPA rules can be beneficial. It does not address overall supply shortages where all fuels (regardless of blend) are in short supply.

### ***Support Documents***

- K. Clean Air Act Section 211(c)(4)(C)
- L. 2005 Energy Emergency Executive Orders
  - Energy Emergency – EO 2005-16
  - FMCSA Waiver – EO 2005-17
  - Vapor Pressure Waiver – EO 2005-18



# **Emergency Relief from FMCSA Safety Regulations**

## **(Hours of Service Waivers)**

### ***Description***

Driver hours of service limits are put in place by the Federal Motor Carrier Safety Administration (FMCSA) and are designed to protect truck drivers from overwork and fatigue. In periods of extreme weather where the delivery of petroleum products (i.e., propane, heating oil) is hampered due to impassable roads<sup>5</sup> or where there is an uncharacteristic increase in demand, motor carrier drivers often need to exceed these limitations in order to deliver sufficient fuel to protect the well-being of residents and limit the effects of an energy emergency. Petroleum supply interruptions may also require drivers to travel greater distances to acquire fuel which can result in excessive delays at fuel terminals (because lines are long). In either of these examples, waivers of the underlying safety regulations establishing these driver hour limitations may be appropriate to allow drivers more time to deliver and pickup fuel.

### ***Intent of Measure***

Relief from FMCSA safety regulations is intended to alleviate the pressure of driver hour limits when these restrictions are hampering the delivery of fuels during an emergency. Hours of service waivers allow marketers to deliver critical heating fuel supplies to their customers during times of severe weather when bad roads cause significant delays in travel time. The primary motivation for the measure is safety and not to mitigate the effects of high fuel prices.

### ***Conditions Under which this Measure May be Used***

Hours of service waivers are only considered under conditions in which problems cover a wide geographic area, affect a number of states, and are caused by factors that exceed the reasonable bounds of the industry's ability to respond. It should be noted that in addition to waiving hours of service, the Federal Motor Carrier Safety Regulations (FMCRs) (390.23) waives compliance with most safety regulations when an emergency is declared. According to 49 CFR 390.5 an emergency means any storm (e.g., thunderstorm, snowstorm, ice storm) earthquake, explosion, blackout, or other occurrence (natural or man-made) that interrupts the delivery of essential services and supplies (such as food and fuel) or otherwise immediately threatens human life or public welfare. Under such circumstances, the FMCSA Field Administrator may declare an emergency if there is a regional crisis which justifies such regulatory relief. In terms of hours of service waivers, this exemption cannot exceed either the duration of the motor carrier's or driver's direct assistance in providing emergency relief to the affected area, 30 days from the date of the initial declaration of the

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<sup>5</sup> In rural areas where customers are without access to natural gas, residential space heating fuels such as propane and heating oil (#2 fuel oil) must be delivered by truck.

emergency, or the exemption from the regulations by the FMCSA Field Administrator. The lesser of these three conditions determine the length of the waiver.

Hours of service waivers can also be granted if an emergency has been declared by the President of the United States, the Governor, or by their authorized representatives having authority to declare emergencies. In this instance, permission from the FMCSA Field Administrator would not be needed. For a more extensive list of criteria and procedures for when hours of service waivers may be appropriate, see the Appendix “Procedures for States to Request Regional Driver Hours Waivers for the FMCSA in the Event of a Potential Serious Shortage of Deliverable Fuels.”

### ***Legal Authority***

Limits on the number of hours a truck driver can operate a vehicle fall under requirements of the FMCSA (49 CFR §390- 399). Any Motor Carrier providing direct relief to the emergency is relieved from all of 49 CFR Parts 390 to 399 (not just hours-of service). Regulations are also relieved in any state that the “supporting commercial motor vehicle” is operating, regardless of whether the State in which they are operating has declared an emergency. Details on [Hours of Service limits](#) and specific rules (“390.23 Relief from regulations” which includes [Parts 390 to 399](#) ) can be found on the FMCSA website. See the Appendix “Emergency Relief from the Federal Motor Carrier Safety Regulations (FMCSR) 49 CFR 390.23” for a synopsis of applicable regulations.

### ***Implementation***

If a governor has declared an emergency in all or any part of the state, driver hours of service are automatically waived for drivers making deliveries to provide emergency relief to the affected area. In a declared energy emergency, such as a severe propane shortage, propane or fuel oil delivery drivers are exempted. This permits them to drive additional hours for delivery or to reach distant supply terminals and return expeditiously. In a natural disaster, such as a hurricane or declared emergency, drivers can work additional hours needed to resupply fuel and other goods. Drivers passing through multiple states do not require that waivers be in effect in those states if they are providing supplies to an area where an emergency has been declared.

### ***Cost of Implementation and Operation***

There are no additional costs to facilitate an hours of service waiver from the FMCSA.

### ***Fuel Savings***

This measure is not intended to reduce fuel usage.

### ***Advantages***

1. This is an effective and straightforward way to help meet consumer demand when there is an impediment to petroleum shipping and delivery, provided the shortage is based on distribution bottlenecks and not a true supply shortage.

### ***Disadvantages***

1. The measure could be used unnecessarily if the proper due diligence is not performed.
2. Possible push back from labor groups if the nature of the emergency does not warrant a waiver.

### ***Support Documents***

- M. Emergency Relief from the FMCSA Safety Regulations
- N. NASEO Guidance on FMCSA Regulation

## **Demand Restraint Measures**

Demand restraint measures focus primarily on encouraging and empowering the public to conserve during a supply shortage. Measures require only voluntary participation with varying levels of commitment/effort. Many conservation measures (i.e., ride share, flex-time) are already in place and require only a quick ramp up in the event of an energy emergency.

The Public Information Program will be a major component in all demand restraint measures and will likely be used in all stages of an energy disruption. In situations where an energy emergency has not been declared, an effort will be made to highlight current resources and to influence the public's behavior and conservation habits.

Lastly, the list of demand restraint measures presented is meant to offer a range of options that can be drawn upon when necessary. In selecting the appropriate response, fuel savings must be considered against potential costs and the ease of implementation. The fuel savings resulting from each of the demand restraint measures will ultimately be dependent upon a number of external factors:

- Will the public perceive the seriousness of a shortage?
- Will the public believe they can play a role in resolving (mitigating) the shortage?

Answers to these questions may be influenced by both the media's response to a petroleum shortage, and any actions or declarations of the state or federal government. State government's role would be to assist the public in coping with shortages and to disseminate accurate and timely information which will help mitigate the effects of the shortage.

# Public Information Programs

## *Description*

The public information programs will be used to: (1) inform citizens about the energy shortage situation; (2) announce emergency measures being implemented in Michigan; and (3) explain ways to reduce energy consumption. Individual measures will be promoted through the use of press releases, press conferences, television, radio, internet, newspapers, and social media.

## Potential Programs to Reduce Demand

*Fuel Savings Educational Tips:* Whether through print, radio, television or internet media, practical tips should be provided to the public to help reduce their fuel usage during an energy emergency. The public information campaign could include the following types of information:

- Walk, cycle, rideshare and use public transit when possible,
- Observe posted speed limits and maintain proper tire pressure,
- Plan your routes to minimize distance and avoid congested areas, and
- Other fuel saving tips as appropriate

The Gas Prices [website](#) from the Michigan Attorney General enables Michiganders to report evidence suggesting unlawful conduct in gasoline pricing. The Attorney General investigates and prosecutes individuals and companies that unlawfully fix the price of gasoline in Michigan.

*Bicycle Program* – In order to decrease the pressures on gasoline or diesel supplies, commuters could be encouraged to use bicycles as alternative means of travel. For this program to be successful, local governments and employers may need to provide more bicycle racks or secured parking areas for employees, and provide (or secure access to) facilities such as showers and changing areas for commuters. Long term bike lanes are increasingly incorporated into new roadways to accommodate cyclists for daily travel. Contact information and biking maps are located on the [MI Commute website](#).

*Promotion of Flex-Time Scheduling* – The encouragement of flex-time scheduling will allow employees across the state to vary their work schedules. Employers will be encouraged to offer one of the recommended options to their employees to facilitate ridesharing and the use of mass transit.

*Tele/E-Commute Program* – Encourage businesses to facilitate telecommuting and work from home arrangements for all or part of the work week. Greater flexibility in the work week should provide means for workers to reduce their required travel.

### ***Intent of Measure***

The intent of this measure is to both inform citizens on the energy shortage and facilitate citizen participation in voluntary programs that will maintain mobility and minimize inconveniences caused by limited fuel supplies. This measure will be implemented during initial stages of a fuel shortage and would continue until the resolution of the shortage or energy emergency.

### ***Conditions Under which this Measure May be Used***

This effort would be among the first programs to be employed. Establishing effective communications with the public is essential if actions taken in response to a shortage are to achieve positive results. Public Information Programs are a key element of each of the measures contained in the Michigan Petroleum Shortage Response Plan.

If the situation should worsen into an emergency or disaster involving multiples agencies and/or jurisdictions, a Joint Information Center (JIC) may be activated. The JIC serves as the central point of contact for all news media regarding the state's response efforts and is designed to effectively coordinate public information efforts and communication resources with all involved state agencies, the Governor's office, and other organizations responding to the incident.

The JIC works within the Incident Command System (ICS) and reports to the Incident Commander/Unified Command. It is typically staffed by state agency Public Information Officers (PIOs) to represent their respective agency's involvement, provide support to the overall JIC mission, and lend individual expertise and talents to the operation.

### ***Legal Authority***

No legal authority is required to initiate this action.

### ***Implementation***

During a more severe shortage, the Governor will issue a press release informing citizens of the energy shortage. A spokesperson will be appointed to represent the state's position on the severity of the shortage and to inform the public of measures being implemented to alleviate the situation. The spokesperson will hold press conferences on a regular basis, as dictated by the severity of the fuel shortage. Additional program promotion will be employed with the implementation of each measure.

If mandatory supply management measures are implemented, the advertising campaign will be increased to keep the public aware of changes that are occurring. The Michigan Public Service Commission (MPSC) will help coordinate this campaign. The amount of advertising will depend on public response and the severity of the shortage.

### ***Cost of Implementation and Operation***

Cost with this measure would include the labor costs of any additional staff and advertising expenses such as: billboards, radio and television time, newspaper ads, etc.

### ***Fuel Savings***

The public information program facilitates public participation in fuel conservation as well as emergency programs. Fuel savings resulting from a Public Information Program have not been estimated. Savings have been attributed, however, to each of the specific measures to be promoted using the Public Information Program.

### ***Advantages***

1. The Public Information Program will be used to get citizens to participate in emergency programs.
2. The public's accepting of the need for these programs will be dependent on their understanding of the problem and their belief that individual actions will make a difference in the overall solution to the problem.
3. The Program will enable the State to properly "frame" the relevant issues so as to increase public understanding of the situation, and to solicit the cooperation of the public and major constituent organizations (e.g., fuel dealers association, ride-sharing organizations) in the proposed solutions.

### ***Disadvantages***

1. There are no disadvantages identified to implementing this program.

# **Expand Ridesharing Programs**

## ***Description***

Current ridesharing programs provide carpool/vanpool matching by local ridesharing offices to area residents and employers on request. Carpool lots are also maintained on major commuter routes to provide safe and convenient parking facilities for Michigan's carpoolers. These programs will be expanded during a fuel shortage.

## ***Intent of Measure***

The intent of this measure is to increase existing ridesharing resources to meet increased demand during a period of energy emergency. Increased ridesharing for the work trip will increase vehicle occupancy, reduce vehicle miles of travel (VMT), decrease fuel consumption, and lessen peak hour congestion. Parking lots in urban areas will also be less crowded. The amount of the reduction in VMT depends upon the size of the urban area and average distance traveled to and from work.

## ***Conditions Under Which This Measure May Be Used***

This measure would be used if demand for ridesharing resources exceeded current program capabilities. While ridesharing programs are regularly monitored to keep pace with demand, an energy emergency could cause a sudden spike in program participation which could overwhelm state resources. Depending on the duration of the emergency, appropriate measures should be taken to ensure ridesharing programs are capable of meeting demand. This measure would not require a declaration of energy emergency and would be implemented internally as needed by the MDOT.

## ***Legal Authority***

This is a voluntary public program and would not require a declaration of energy emergency. The Governor could advise MDOT to increase the scope of these programs in response to the shortage.

## ***Implementation***

Operations – The advertising campaign for ridesharing measures will be coordinated by the MDOT Office of Communications PIO and disseminated through customary information channels. Depending on the duration of the shortage, a billboard advertising campaign may be initiated to place information about reducing energy consumption and alternative transportation along major commuter highways and local roadways – the areas most likely to have single-occupant vehicles. Encouragement would also be given to setting up ride



boards in high traffic areas (post offices, schools, churches) or establishing internet based exchanges or forums to facilitate carpools for weekly errands and routine trips.

Start-Up Procedures – Initial steps would involve leveraging current resources to their maximum level. Promotion of this program is included in the Public Information Program.

Current Resources – All current MDOT carpool services are currently available online at the [Michigan Rideshare](#) webpage and are summarized below:

- a) [Rideshare Office Map and Contacts](#) - Local Rideshare Offices (LRO) help commuters find vacancies in existing vanpools, or match people who are interested in forming a new carpool or vanpool group.
- b) [Guaranteed Ride Home Program](#) - The Guaranteed Ride Home Program (GRH) offers reimbursement for taxi fare or car rental should an emergency or unexpected overtime cause you to miss your carpool or vanpool ride.
- c) [Carpool Lot Map](#) - Includes a searchable map of lot locations throughout Michigan.
- d) [MichiVan Commuter Vanpools](#) - MichiVan, sponsored by MDOT and operated by VPSI Inc., supplies fully insured passenger vans to commuter groups.
- e) [Find a MichiVan Route](#) - This website features a list of current vanpool routes.

Ramp-Up – If demand was anticipated to be in excess of current program capabilities, a short-term plan would need to be implemented. An appropriate plan to increase program capacity would be handled by MDOT.

Evaluation – Each LRO maintains information on the number of requests received and will compare the difference in volumes before and after the Public Information Program is instituted. This information will be reported monthly to MDOT.

### ***Cost of Implementation and Operations***

If the workload becomes too burdensome for current staff, the LROs can hire additional people, as needed, on a temporary basis. Their duties will consist of data entry and providing carpool match lists to potential carpoolers. This will help free more experienced staff members to continue efforts to expand employer-based ridesharing programs. The cost of the temporary program expansion will be based on salaries and any additional funds needed to increase ridesharing infrastructure.

### ***Fuel Savings***

Ridesharing is a proven technique for reducing fuel savings by removing the number of vehicles on the road. It also makes use of vehicle seats that would otherwise be unoccupied and avoids empty backhauls associated with forms of public transit such as buses. To calculate fuel savings the formula below can be used.

Total Fuel Savings =

(Daily area-wide VMT)  
x (Percentage reduction in area-wide VMT)  
x (Consumption rate in gallons/mile)  
x (Daily Fuel Savings (gallons))  
x (# of Working Days)

In addition, MDOT provides an online [“Cost to Commute Calculator”](#) which can be used to estimate a person’s fuel and cost savings on a monthly and yearly basis.

### ***Advantages***

1. Traffic flow improvements and fuel savings benefits are gained from increased carpooling.
2. Carpoolers enjoy reduced commuting costs and relaxed travel.
3. Area-wide carpool programs can be expanded easily with minimum cost.

### ***Disadvantages***

1. Individual mobility may be limited because most carpools have set rules that do not allow members to run errands on the way to or from work, and because each member cannot dictate their own arrival and departure time from work.

# Speed Limit Enforcement

## ***Description***

The Governor directs the Michigan State Police and all other law enforcement agencies within the state to issue tickets to drivers who exceed posted speed limits at the discretion of the officer under the existing circumstances. If this action was taken during a declared state of energy emergency, the point schedule for violation of the speed limit as provided for in Public Act 25 of 1980 could be modified based on the severity of the emergency.

## ***Intent of Measure***

This measure is a consistent and ongoing measure to enforce State laws and to protect public safety, but also intended to increase fuel efficiency by enforcing compliance with posted speed limits. By raising awareness regarding the potential repercussions of speeding, not only through enforcement penalties and increased insurance costs, but decreased efficiency in gasoline consumption, corrective consumer behavior is expected.

## ***Conditions Under Which the Measure May Be Used***

This measure is in force on an ongoing basis. The Public Information Program and other voluntary measures would be used in support of this policy in a declared Energy Emergency.

## ***Legal Authority***

This action could be taken by the Governor under the authority granted to the Chief Executive under the Michigan Constitution. The points could be assessed by the Governor under the authority of Public Act 191 of 1982.

## ***Implementation***

Traffic safety is a top priority for the State of Michigan. Law enforcement officers enforce speed limits on limited access freeways and secondary roadways as part of overall traffic enforcement and enforce the legislated posted speed limits on all public roadways.

Law enforcement officers issue traffic citations for violations of the motor vehicle code with the intent to change driver behavior and reduce property damage and injury crashes. When motorists are stopped for a violation, officers consider the totality of the circumstances and make a determination as to whether a citation or a warning is warranted. A declared fuel shortage would be an additional factor considered by the officer when conducting speed enforcement.

In the case of severe shortages, enforcement resources would be adjusted accordingly, which may include additional personnel or equipment (e.g., speed measurement devices).

The intent is to influence driver behavior through a combination of public information and consistent enforcement. Implementation of this measure would not include a mandate of lower speed limits.

**Start-Up Procedures** – The Governor will issue a press release to inform the public of the State of Energy Emergency and the importance of observing posted speed limits to both safety and fuel economy and indicate whether an increase in points will result from the emergency declaration.

**Operations** – The Director of the Michigan State Police will communicate to law enforcement personnel the declaration of the State of Energy Emergency and any resulting increases in point totals for violations.

**Evaluation** – Existing state surveys of average highway speeds compiled by MDOT will be examined to evaluate the impact of public education and enhanced enforcement.

### ***Cost of Implementation and Operation***

As an ongoing effort, this measure is accomplished with existing staff and resources and is intended to maintain current enforcement levels. In the event it was determined that increased State Police patrols were necessary, estimates of those expenses would be determined at that time. A substantial increase in court cases is not anticipated, but may require increases in budgets to cover overtime expenses if it occurs.

### ***Fuel Savings***

The objective of this measure is to minimize the number of motorists driving in excess of 70 mph. Gas mileage decreases as the vehicle surpasses 55 mph, the optimal speed for the average car. As the speed approaches 70 mph gas mileage is reduced by 17 percent and drops by 28 percent at 80 mph. Actual fuel savings depend on the extent of public compliance.

### ***Advantages***

1. This measure is ongoing and does not require significant operational changes.
2. This measure continually improves highway safety.

### ***Disadvantages***

1. Higher levels of compliance may not occur without directly increasing the number of police on the highways.
2. Public support for increased enforcement for fuel savings may not be “robust” and may ultimately result in decreased support for law enforcement in general – if the public perception is that the agencies are spending increased amounts of time writing “energy citations.”

# State Departments' Travel Budget Reductions

## ***Description***

The Governor would direct state department directors to reduce expenditures for vehicle travel. The aggregate amount of the reduction would be proportional to the severity of the energy emergency. Each department's reduction would be based on that department's need to travel in order to provide essential state services.

## ***Intent of Measure***

The purpose of this action is two-fold. First, it will reduce demand for fuel purchased in bulk by the state. Second, it will demonstrate the need for emergency motor fuel conservation. State government must be able to show its ability to reduce fuel use at the same time the general public is being asked to conserve.

## ***Conditions Under Which The Measure May Be Used***

This measure would typically be used at the onset of a shortage. Because the measure does not require a declaration of energy emergency, it can be used earlier than mandatory programs and would complement other voluntary programs.

Rapidly rising gasoline prices in a shortage may make this measure unnecessary. Departmental travel budgets initially based on lower gasoline cost may be unable to cover the expense of normal operations, forcing curtailment of travel.

## ***Legal Authority***

This action could be taken by the Governor by the authority granted to the Chief Executive under the Michigan Constitution.

Legal Constraints – In a severe shortage, the reduction in usage ordered could be very large. At some point the reductions ordered may impose upon the ability of a department to provide statutory or constitutionally mandated responsibility. Exemptions for some activities would have to be provided for, or the statute, rule, or order temporarily suspended by the Governor under Public Act 191 of 1982.

## ***Implementation***

Start-Up Procedures – The Department of Technology, Management and Budget (DTMB), will develop travel reductions for each state department and agency. The Governor will then ask each department to respond to the requested reduction. Department directors

will review their travel needs in light of the suggested reduction and recommend to the Governor by program and appropriation unit where reductions can be accomplished.

Upon agreement between the Governor and the department directors, the Governor will announce by Executive Order the amounts of the reductions. Travel funds will be restricted by withholding money from each department's travel budget.

Operations – Departments will individually initiate actions to keep expenditures for travel within newly established travel allotments. Travel expenditures will be monitored against the revised travel budgets by the Department of Technology, Management and Budget.

Evaluation – A sample of travel vouchers submitted from each department prior to and following implementation of the travel reduction measure will be reviewed to assess changes in travel activity and transportation modes. In addition, travel expenditures will be monitored and compared to both pre-emergency levels and revised travel budget targets.

### ***Cost of Implementation and Operations***

This action could be taken quickly and at low cost. Establishing proposed department reductions in travel budgets could be completed within two weeks. A third week would be required to negotiate the reduction with each department to arrive at the cut back to be ordered by the Governor. The Department of Technology, Management and Budget would then have three weeks to reduce allotted travel funds to the targeted level and establish a reporting procedure to monitor the program's effectiveness. This measure would be accomplished with existing staff and resources.

### ***Advantages***

1. This measure will provide an example for the commercial and industrial sector to follow similar budget reductions in travel.
2. The measure will reduce state motor fuel consumption.
3. Additional state funds may be available for other purposes as a result of the reduction in travel budgets.

### ***Disadvantages***

1. The measure could prevent the state from providing all existing services to the public.
2. The measure will restrict state employees from participating in activities away from the immediate work station.
3. Additional expenses may occur by reducing travel (i.e., the cost of over-night accommodations rather than returning to regular work stations).

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## A. Act 191 of 1982, as amended

### Declaration of State of Energy Emergency

AN ACT to provide for the declaration of a state of energy emergency; to provide for procedures to be followed after a declaration of a state of energy emergency; to create an energy advisory committee and prescribe its powers and duties; to prescribe the powers and duties of the governor; to prescribe penalties; and to repeal certain acts and parts of acts.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982

*The People of the State of Michigan enact:*

#### **10.81 Definitions. [M.S.A. 3.1001(11)]**

Sec. 1. As used in this act: (a) "Energy advisory committee" means the committee created under section 2.

(b) "Energy emergency" means a condition of danger to the health, safety, or welfare of the citizens of this state due to an impending or present energy shortage.

(c) "Energy resource" means electricity, natural gas, synthetic gas, a petroleum product including a liquefied petroleum gas, coal, wood fuel, geothermal source, hydropower, nuclear material, or other source producing power or heat.

(d) "Energy resource supplier" means a person who furnishes an energy resource for the public at the wholesale or retail level.

(e) "Energy shortage" means lack of adequate available energy resources in the state, or any part of the state, as determined by the energy advisory committee or the governor.

(f) "Person" means an individual, partnership, corporation, organization, or association of any kind.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982 ;--Am. 1990, Act 229, Imd. Eff. Oct. 8, 1990 .

**Compiler's Note:** For transfer of functions relating to energy policy from the Energy Administration, Department of Commerce, to the Public Service Commission, Department of Commerce, see E.R.O. No. 1986-4, compiled at § 460.901 of the Michigan Compiled Laws.



**10.82 Energy advisory committee; creation; membership; chairperson; notifying governor of impending energy emergency; determination. [M.S.A. 3.1001(12) ]**

Sec. 2. (1) An energy advisory committee is created. The committee shall consist of the director of commerce, the director of the department of agriculture, the chairperson of the Michigan public service commission, the director of public health, the director of transportation, and the director of the department of state police. The governor shall designate 1 of the 6 members of the energy advisory committee as chairperson of the committee.

(2) The energy advisory committee shall notify the governor of an impending energy emergency. The energy advisory committee shall determine whether an energy emergency is imminent on the basis of information available to the energy advisory committee from the Michigan public service commission, other state agencies, federal agencies, and other sources of information including computer information systems.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982 ;--Am. 1990, Act 229, Imd. Eff. Oct. 8, 1990 .

**Compiler's Note:** For transfer of powers of the Director of the Energy Administration associated with the Director's designation as a member of the Energy Advisory Committee to the chairperson of Public Service Commission, see E.R.O. No. 1986-4, compiled at § 460.901 of the Michigan Compiled Laws.

**10.83 State of energy emergency; declaration, continuation, extension, and termination. [M.S.A. 3.1001(13) ]**

Sec. 3. (1) The governor may declare, by executive order or proclamation, a state of energy emergency upon notification of an impending energy emergency by the energy advisory committee under section 2(2), or upon the governor's own initiative if the governor finds that an energy emergency exists or is imminent.

(2) Except as provided in subsections (3) and (4), the state of an energy emergency declared by the governor pursuant to subsection (1) shall continue until the governor finds that the energy emergency no longer exists, or until the state of energy emergency has been in effect for 90 days, whichever period is shorter.

(3) After a state of energy emergency has been in effect for 90 days, the legislature may approve an extension of the state of energy emergency for a specific number of days by a concurrent resolution adopted by a record roll call vote by a majority of the members elected to and serving in each house of the legislature. If the legislature does not act to extend the state of energy emergency pursuant to this subsection, the state of energy emergency is terminated.

(4) The legislature may terminate a state of energy emergency at any time after the governor declares a state of energy emergency, by a concurrent resolution adopted by a record roll call vote by a majority of the members elected to and serving in each house of the legislature.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982 .

### **10.84 Powers of governor during energy emergency. [M.S.A. 3.1001(14) ]**

Sec. 4. During an energy emergency, the governor may do all of the following: (a) Order specific restrictions on the use and sale of energy resources. Restrictions imposed by the governor under this subdivision may include:

(i) Restrictions on the interior temperature of public, commercial, industrial, and school buildings.

(ii) Restrictions on the hours and days during which public, commercial, industrial, and school buildings may be open.

(iii) Restrictions on the conditions under which energy resources may be sold to consumers.

(iv) Restrictions on lighting levels in public, commercial, industrial, and school buildings.

(v) Restrictions on the use of display and decorative lighting.

(vi) Restrictions on the use of privately owned vehicles or a reduction in speed limits.

(vii) Restrictions on the use of public transportation including directions to close a public transportation facility.

(viii) Restrictions on the use of pupil transportation programs operated by public schools.

(b) Direct an energy resource supplier to provide an energy resource to a health facility; school; public utility; public transit authority; fire or police station or vehicle; newspaper or television or radio station for the purpose of relaying emergency instructions or other emergency message; food producer, processor, retailer, or wholesaler; and to any other person or facility which provides essential services for the health, safety, and welfare of the residents of this state.

(c) By executive order, suspend a statute or an order or rule of a state agency or a specific provision of a statute, rule, or order, if strict compliance with the statute, rule, or order or a specific provision of the statute, rule, or order will prevent, hinder, or

delay necessary action in coping with the energy emergency. The governor may not suspend a criminal process or procedure or a statute or rule governing the operation of the legislature. At the time of the suspension of a statute, rule, or order or a specific provision of a statute, rule, or order, the governor shall state the extent of the energy shortage and shall specify the provisions of a statute, rule, or order which are suspended, the length of time for which the provisions are suspended, and the degree to which the provisions are suspended. A suspended statute, rule, or order shall be directly related to an energy emergency.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982 .

**10.85 Executive order, proclamation, or directive issued by governor; rescission or amendment; duration; continuation for extended period; dissemination; notification of legislature. [M.S.A. 3.1001(15) ]**

Sec. 5. (1) The governor may issue an executive order, proclamation, or directive having the force and effect of law to implement this act. The governor may rescind or amend an executive order, proclamation, or directive.

(2) An executive order, proclamation, or directive issued under this act shall be effective for the duration of a state of energy emergency as provided in section 3(2). If the legislature approves an extension of a state of energy emergency pursuant to section 3(3), an executive order, proclamation, or directive shall continue in effect for the extended period unless by a concurrent resolution adopted by a record roll call vote by a majority of the members elected to and serving in each house of the legislature disapproves the executive order, proclamation, or directive, or unless the executive order, proclamation, or directive is rescinded by the governor pursuant to subsection (1).

(3) An executive order, proclamation, or directive issued under this act shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the secretary of state and the department of state police.

(4) The governor shall notify the legislature promptly of an executive order, proclamation, or directive issued under this act.

**10.86 Violation of act, order, proclamation, or directive as misdemeanor; penalty; separate offense; action by attorney general or prosecuting attorney. [M.S.A. 3.1001(16) ]**

Sec. 6. (1) A person who knowingly violates this act or an order, proclamation, or directive issued by the governor under this act, is guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each day a violation continues is a separate offense.

(2) The attorney general or a prosecuting attorney of a county may bring an action in a court of competent jurisdiction to prevent a violation of this act or of an executive order, proclamation, or directive issued pursuant to this act, or to compel a person to perform a duty imposed on the person under this act or an executive order, proclamation, or directive issued under this act.

**History:** 1982, Act 191, Imd. Eff. June 23, 1982 .

**10.87 Powers of governor not limited, modified, or abridged by act. [M.S.A. 3.1001(17) ]**

Sec. 7. This act shall not limit, modify, or abridge the authority of the governor to proclaim a state of disaster pursuant to the emergency preparedness act, Act No. 390 of the Public Acts of 1976, being sections [30.401](#) to [30.420](#) of the Michigan Compiled Laws, or to exercise any other powers vested in the governor by the state constitution of 1963, state statutes, or the common law of the state.

**10.88 Repealed. 1983, Act 152, Imd. Eff. July 18, 1983. [M.S.A. 3.1001(18) ]**

**Compiler's Note:** The repealed section pertained to the applicability of sections 1 to 7 after June 1, 1983.

**10.89 Repeal of §§ [10.41](#) to [10.48](#). [M.S.A. 3.1001(19) ]**

Sec. 9. Act No. 38 of the Public Acts of 1979, as amended, being sections [10.41](#) to [10.48](#) of the Compiled Laws of 1970, is repealed.

## **B. EO – Establishment of State Set-Aside for Petroleum Products**

**Executive Order No. \_\_\_\_ of 20\_\_\_\_**

### **Authority and Scope**

Based on the authority vested in me by Section 4 of Act No. 191 of the Public Acts of 1982, and upon declaration of a state of energy emergency in the Executive Proclamation <year> - \_\_\_\_ of \_\_\_\_ under this act, I, <Governor's name>, Governor, hereby direct each prime supplier of petroleum products to the State of Michigan to set aside three percent (3%) of its projected sales of motor gasoline, distillate fuels including kerosene, No. 1 fuel oil, No. 2 fuel oil, diesel fuel (all grades) and propane each month, to be directed for sale to wholesale purchasers or essential end-users identified by the State of Michigan as experiencing hardship due to insufficient supplies of petroleum products and upon approval of a certification of hardship by the State. This order becomes effective 12:01 a.m., (month, day, year).

I hereby designate the Public Service Commission, Michigan Department of Licensing and Regulatory Affairs as the state office responsible for the administration of the State Set-Aside as set forth below. In this capacity, the Public Service Commission shall have the following duties and responsibilities:

1. Promulgate administrative rules which will specify the procedures and criteria for obtaining relief from the set-aside.
2. Provide a mechanism which will allow for appeals of any decisions made by the Public Service Commission.
3. Provide a means to assure that fuel released from the State Set-Aside is used for hardship purposes only.
4. Utilize the set-aside to provide for the health, safety, and welfare of the citizens of Michigan.

### **State Set-Aside Program**

1. Volumes
  - A. A prime supplier shall inform the state office, at least one week before the first day of each month, of the estimated volume of petroleum products subject to State Set-Aside to be delivered into Michigan for consumption within the state.
  - B. The set-aside volume available to the state office for a particular month shall be the amounts calculated by multiplying .03 by each prime supplier's total projected sales to be available in the subsequent month for consumption within the State of Michigan.

- C. The State Set-Aside for a particular month may not be accumulated or deferred, but shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.
  - D. Volumes remaining in a prime supplier's set-aside at the end of the month which have not been used shall revert back to the supplier to become part of the subsequent month's supply and shall be retained and made available to accounts and customers in the State of Michigan in an equitable manner.
2. Company Representative – Each prime supplier shall designate a company representative to act for and on behalf of the prime supplier with respect to the State Set-Aside Program. Each prime supplier shall notify the state office, in writing and within ten work days of the date of this order, of such designation.
  3. Authorizing Document – The state office shall issue a document authorizing the assignment of the amount of petroleum products to be released from the set-aside upon full or partial approval of an applicant's request. A copy of this document shall also be provided by the state office to the designated company representative of the prime supplier from which the assignment is to be made. An authorizing document issued by the state office is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance, even in cases where delivery of the product subject to the authorizing document cannot be made until the following month.
4. Area Release of State Set-Aside
    - A. At any time during the month, the state office may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the state.
    - B. The state office may designate certain geographical areas within the state as suffering from an intrastate supply imbalance. At any time during the month, the state office may order some or all of the prime suppliers with purchasers within such geographical areas to release part or all of their set-aside volume through their normal distribution systems. This will increase the allocation to all the supplier's purchasers located within such areas.
    - C. Orders issued pursuant to this declaration shall be in writing and effective immediately upon presentation to the prime supplier's designated company representative.
  5. Prevailing Price – Any assignments made from the set-aside under this order shall be made available to the wholesale purchaser-consumer or end-user at prices prevailing for the same class of purchasers and products in the locality of the wholesale purchaser-consumers, end-user, or wholesale purchaser-reseller at the time of the sale.

**Violation of This Order**

Any person who knowingly violates this directive is guilty of a misdemeanor punishable by a fine of not more than \$500. Each day a violation continues is a separate offense. The Attorney General, or a Prosecuting Attorney of a county, may bring an action in a court of competent jurisdiction to prevent a violation of this order or to compel a person to perform a duty imposed on the person under this Executive Order.

**Duration of Order**

This order shall remain in effect for \_\_\_\_ days from its effective date unless amended, superseded, or rescinded by further Executive Order. It shall expire 90 days after the proclamation of a state of energy emergency unless extended by concurrent resolution of the legislature as provided for in Section 3 (3, 4), Act No. 191 of the Public Acts of 1982, as amended.

Dated: \_\_\_\_\_  
Lansing, Michigan

\_\_\_\_\_  
Governor

Filed with the Secretary of State and with the Department of State Police on  
\_\_\_\_\_.

## **C. State Set-Aside Emergency Rules for Petroleum Products**

### **Department of Licensing and Regulatory Affairs, Michigan Public Service Commission**

These rules take effect upon filing with the Secretary of State and the Department of State Police.

(By authority conferred on the chairman of the Public Service Commission, Department of Licensing and Regulatory Affairs, by the Governor upon the proclamation of an energy emergency and by Executive Order <year> - \_\_\_\_ on (month, day, year) under Sections 3 and 5 of Act No. 191 of the Public Acts of 1982, and Section 48 of Act No. 413 of the Public Acts of 1982, as amended, -- being Sections 10.81 to 10.89 and 24.248 of the Michigan Compiled Laws of 1971.)

#### **FINDING OF EMERGENCY**

By executive proclamation 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 <year> - \_\_\_\_ was issued establishing a state set-aside for petroleum products. In this order, the Governor designated the Public Service Commission, Department of Licensing and Regulatory Affairs, as the agency responsible for the administration of this program and the promulgation of emergency rules which will specify the procedures and criteria for obtaining relief under the state set-aside program.

Delay in establishing rules of procedure to effectively carry out the duties delegated to the Public Service Commission, Department of Licensing and Regulatory Affairs, regarding the administration of the state set-aside 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 in Michigan, the Department of Licensing and Regulatory Affairs finds the following rules are needed for the preservation of public health, safety, and welfare, and that an emergency exists within the meaning of Section 48 of Act No. 413 of the Public Acts of 1982, as amended, being S24.248 of the Michigan Compiled Laws.

#### **Definitions**

Rule 1. (1) As used in these rules:

- (a) "Current requirements" means the supply of an allocated product needed by an end-user or wholesale purchaser to meet its present supply requirement for 1 month.
- (b) "Department" means the Department of Licensing and Regulatory Affairs
- (c) "Director" means the Director of the Department of Licensing and Regulatory Affairs, or the designee thereof, other than the Director as defined in these rules.
- (d) "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 Number 1, and Number 2, diesel fuels as covered by ASTM specifications D396 and D975. It does not include kerosene type jet fuel.

- (e) “End-User” means any person who is an ultimate consumer of a petroleum product other than a wholesale purchaser-consumer.
- (f) “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.
- (g) “Officer” means the fuel allocation officer authorized to sign orders and to authorize documents for the set-aside assignments.
- (h) “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.
- (i) “Person” means an individual, corporation, firm, governmental unit, organization, or any other establishment whatsoever.
- (j) “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.
- (k) “Propane” means a normally gaseous paraffinic compound (C<sub>3</sub>H<sub>8</sub>), which includes all products covered by natural gas policy act specifications for commercial and HD-5 propane and ASTM specification D1835. EXCLUDES: feedstock propanes, which are propanes not classified as consumer grade propanes, including the propane portion of any natural gas liquid mixes, that is butane-propane mix.
- (l) “Purchaser” means a wholesale purchaser or an end-user, or both.
- (m) “Retail” means any retail gasoline station, jobber or distributor which sells motor gasoline, propane and/or distillate fuel oil directly to an end-user.
- (n) “Service” means personal service or service by registered or certified United State mail, postage prepaid. Service upon a person’s duly authorized representative shall constitute service upon the person. Service by mail is complete upon mailing.
- (o) “Set-aside assignment” means an order directing a prime supplier to make a product from its state set-aside available to a designated person.
- (p) “State set-aside” means, with respect to a particular prime supplier, that amount of motor gasoline, propane or distillate fuel oil which is made available from the total supply of a prime supplier, for utilization by the Department 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 prime supplier’s projected sales (Part II (b) 13, 14, 15 of EIA-782C) for the next month which will be sold into Michigan’s distribution system for consumption within the state. This estimated portion shall be taken directly from the monthly report of petroleum products sold into states for consumption, United States Department of Energy, Energy Information Administration Form EA-782C, filed by said supplier.
- (q) “Supplier” means a firm or subsidiary of a firm, other than the United States department of Defense, which 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, a refiner, importer, reseller, jobber, or retailer.

- (r) "Total supply" means the sum of projected sales of motor gasoline a prime supplier anticipates to make in the state of Michigan, as reflected by lines 13, 14, and 15, part II (b) of the EIA-782C form filed for that month, and for propane and distillate fuel oil including kerosene for the volumes indicated as projected sales for each as shown on lines 16, 17, 18, 19 and 26.
- (s) "Wholesale purchaser" means a wholesale purchaser-reseller or a wholesale purchaser-consumer.
- (t) "Wholesale purchaser-consumer" means an ultimate consumer which, 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.
- (u) "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.

**State Set-Aside: Assignments; Eligibility; Criteria; Amounts; Application; Decision; Issuance; Order.**

Rule 2. (1) The following persons may apply for an assignment under the state set-aside program:

- (a) 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. Examples are:
    - (i) Residential, institutional, and commercial space heating.
    - (ii) Agricultural producers and distributors of perishable foods.
    - (iii) Emergency medical services.
    - (iv) Energy suppliers.
    - (v) Firefighting units.
    - (vi) Police.
    - (vii) Public mass transportation.
    - (viii) Sanitation services.
    - (ix) Snow removal.
    - (x) Telephone companies.
  - (b) A wholesale purchaser-reseller who seeks an assignment to enable that a retailer, upon establishment of a tourist gasoline availability plan by the Director under subrule (6)(a), may be eligible for an assignment. This will not exceed 20-percent of the monthly volume of the location for which application is made, as long as the retailer is operating within ½ mile of a major tourist route specified by the Director under subrule (6)(b).
- (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 subrule (1)(a). Such circumstances include either of the following:

- (a) The person specified in subrule (1)(a) is undergoing curtailment of motor gasoline, propane and distillate fuel oil for reasons beyond his or her control which are not a result of the inability to pay.
  - (b) 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 subrule (1)(a).
- (3) 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 will be made available by the Public Service Commission. 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 under conditions which make it 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 5 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.
- (4) 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 office 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.
- (5) 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 prime suppliers, or may split assignments between prime suppliers. In the case of a retail gasoline station doing business under a brand name associated with a prime supplier, assignments will be made to the outlet only from the set-aside of that prime supplier.
- (6) 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.

## **State Set-Aside: Appeals; Petition; Stay Order; Response; Decision**

### **Rule 3.**

(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:

- (a) The name and address of the petitioner.
- (b) A concise statement of facts surrounding the case, including the reason for the appeal and relief sought.
- (c) 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 which states that 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:

- (a) In the absence of a stay order, petitioner will suffer irreparable harm.
- (b) 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 3 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 5 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.

## D. Application for State Set-Aside

<p><b>Michigan Public Service Commission</b>                  P.O. Box 30221, Lansing, MI 48909                  (517) 241-6180</p> <p><b>STATE SET-ASIDE APPLICATION                  CERTIFICATION OF PETROLEUM PRODUCT HARDSHIP</b></p>	<p>FOR STATE USE ONLY:                  Received: _____</p> <p>Code _____                  Reviewed By _____                  Approval Date _____</p> <p>Notify: App. <input type="checkbox"/> Supplier <input type="checkbox"/></p> <p>Denial Date _____ Notify <input type="checkbox"/></p>
--	---

1. Applicant Identification Information:	
	(    )
Name	Business Phone (Include Area Code)
	(    )
Street/Box/RFD	Home Phone (Optional)
City and Zip Code	Individual to Contact
County	For which month are you seeking assistance?

2. Location for Delivery of Product if Different From Above:
Street/Box/RFD, City, State and Zip Code

3. Applicant's Classification:	4. Product Requested:
<input type="checkbox"/> Wholesale Purchaser-Distributor (Jobber) <input type="checkbox"/> Wholesale Purchaser-Retailer (Gas Station) <input type="checkbox"/> End-User	(Submit <i>one</i> application for <i>each</i> product requested) <input type="checkbox"/> Gasoline <input type="checkbox"/> #1 Fuel Oil <input type="checkbox"/> #2 Fuel Oil <input type="checkbox"/> Diesel <input type="checkbox"/> Propane

10. Supplier(s). Name the prime supplier (major oil company) which is your ultimate supplier: (If supplied by a jobber or distributor, indicate their name and the name of their supplier.)	
<input type="checkbox"/> My existing supplier(s), named below, is unable to supply the quantity requested. <input type="checkbox"/> I do not have a supplier. The two suppliers, named below, have been contacted and could not supply the product requested.	
Name	Name
Street/Box/RFD	Street/Box/RFD

City and Zip Code	City and Zip Code
Contact Official ( )	Contact Official ( )
Phone (including area code) Check One <input type="checkbox"/> Existing Supplier <input type="checkbox"/> Potential Supplier	Phone (including area code) Check One <input type="checkbox"/> Existing Supplier <input type="checkbox"/> Potential Supplier

**11. Indicate total amount of product received each month from your supplier(s) for the base year (month, year) through (month, year).**

Base Period Supply Volume by Month (Gallons) (Indicate the year next to the month)

January	May	September
February	June	October
March	July	November
April	August	December
Base Period Supply Volume	Total	

Does this base period supply volume agree with your supplier? Check  Yes  No

12. The following question is for motor fuel requests only:

(a) Indicate your purchases (gallons) in October (year) \_\_\_\_\_, November (year) \_\_\_\_\_, December (year) \_\_\_\_\_  
January (year) \_\_\_\_\_ and February (year) \_\_\_\_\_ Five Month Average \_\_\_\_\_

(b) Did you overdraw on your allocation last month?  Yes  No By how much? \_\_\_\_\_ Gallons

Explain reason why you were overdrawn. \_\_\_\_\_

(c) Have you sought assistance from the U.S. Department of Energy (DOE) for resolution of your allocation problems?

Yes  No Date of Application \_\_\_\_\_ DOE Case Number \_\_\_\_\_

	Approved	Pending	Denied
Base Period/Assignment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exception/Appeal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13. Describe the type of customers you are requesting product for, the nature of their business and amount of product requested for each. *Attachment additional sheets as necessary.*

Business Name & Phone Number (gallons)	Type of Business & Amount Requested	Base Period Obligation
_____	_____	_____
_____	_____	_____
_____	_____	_____

14. Describe in complete detail the reasons for your hardship. Be specific. Explain all circumstances and situations related to hardship request -- this information will be investigated and will act as the principal basis for evaluation of the request. Indicate for each of the customers as described above the nature of the supply problems. *Attach additional sheets as necessary.*

**15. Certification (Please remember to sign)**

I certify that all of the above information is true and accurate and that any quantity granted will be used for purposed herein described and will not be diverted to other uses. I further certify that I have an energy conservation program in effect.

\_\_\_\_\_  
Name (and Title)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Title 18 U.S.C. Section 1001 makes it a crime for any person knowingly and willingly to make to any Department or Agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within the jurisdiction.

If different than above

Prepared by: \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

## E. Authorization for Release of State Set-Aside

### Department of Licensing and Regulatory Affairs, Michigan Public Service Commission

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In accordance with the provisions contained in the Governor's Executive Order \_\_\_\_ of 20\_\_, as provided for under Public Act 191 of 1982, as amended, you are directed to release \_\_\_\_\_ gallons of \_\_\_\_\_(insert fuel) to the counties of (specify counties) \_\_\_\_\_ . This product is to be drawn from the "State Set-Aside" as provided by Executive Order and should be made available to those retail service stations which you supply in the designated area(s) in an equitable manner through your normal distribution system. This order is effective immediately. Any person aggrieved by this order may file an appeal with the Michigan Public Service Commission.

Chairman  
Michigan Public Service Commission  
Michigan Department of Licensing and Regulatory Affairs  
P.O. Box 30221  
Lansing, MI 48909  
(517) 241-6180

\_\_\_\_\_  
Date

\_\_\_\_\_  
Petroleum Allocation Officer



## **F. EO – Implementation of Priority End-User Plan**

**Executive Order No. \_\_\_ of 20\_\_**

### ***Authority and Scope***

Based on the authority vested in me by Section 4 of Act No. 191 of the Public Acts of 1982, as amended, and upon declaration of a state of energy emergency in the Executive Proclamation 20\_\_- \_\_\_ of \_\_\_\_\_ under this act, I, \_\_\_\_\_, Governor, hereby implement a Priority End-User Plan, as set forth below, to become effective in the counties of \_\_\_\_\_ (list specific counties or indicate "State of Michigan") on 12:01 a.m., (month, day, year).

### ***Priority End-Users***

Petroleum suppliers shall supply 100 percent of the current requirements of fuel requirements to police agencies, firefighting units, and emergency medical series upon certification. This certification, to be submitted from a priority end-user to their supplier, shall contain:

1. The most recent 12 months' purchases in gallons.
2. Anticipated requirements for each of the next 12 months.
3. Written justification explaining the need for any volumes in excess of historical or contractual purchases.
4. A sworn statement that the information contained in the certification is true and accurate and that the petroleum product to be provided will only be used for priority use as indicated (police agencies, firefighting, and/or emergency medical services).

Suppliers will have thirty (30) work days to begin supplying a priority account with the current requirements upon submission of the certificate of need.

I hereby designate the Michigan Public Service Commission Michigan, Department of Licensing and Regulatory Affairs, as the state office responsible for the administration of this program. As such, the Commission shall provide for a mechanism which will allow for the resolution of any dispute arising out of the imposition of the Priority End-User Plan.

### ***Violation of this Order***

Any person who knowingly violates this directive is guilty of a misdemeanor punishable by a fine of not more than \$500. Each day a violation continues is a separate offense. The

Attorney General or a Prosecuting Attorney of a county may bring an action in a court of competent jurisdiction to prevent a violation of this order or to compel a person to perform a duty imposed on the person under this Executive Order.

***Duration of Order***

This order shall remain in effect for \_\_\_\_ days from its effective date unless amended, superseded, or rescinded by further Executive Order. It shall expire 90 days after the proclamation of a state of energy emergency unless extended by concurrent resolution of the legislature as provided for in Act No. 191 of the Public Acts of 1982.

Dated: \_\_\_\_\_  
Lansing, Michigan

\_\_\_\_\_  
Governor

File with the Secretary of State and with the Department of State Police on  
\_\_\_\_\_.

## **G. Priority End-User Appeals Procedure**

### **Department of Licensing and Regulatory Affairs, Michigan Public Service Commission**

These rules take effect upon filing with the Secretary of State and the Department of State Police.

(By authority conferred on the chairman of the Michigan Public Service Commission, Department of Licensing and Regulatory Affairs, by the Governor upon the proclamation of an energy emergency and by Executive Order 20\_\_ - \_\_ on (month, day, year) under Sections 3 and 5 of Act No. 38 of the Public Acts of 1982, as amended, and Section 48 of Act No. 306 of the Public Acts of 1969, as amended, being S10.43, 10.45, and 24.248 of the Michigan Compiled Laws.)

#### **FINDING OF EMERGENCY**

By executive proclamation 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 20\_\_ - \_\_\_\_ was issued establishing a priority end-user plan. In this order, the Governor designated the Michigan Public Service Commission, Department of Licensing and Regulatory Affairs, 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 which will provide this mechanism.

Delay in establishing rules of procedure to effectively carry out the duties delegated to the Michigan Public Service Commission, Department of Licensing and Regulatory Affairs, regarding the administration of the priority end-user plan 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 in Michigan, the department of Licensing and Regulatory Affairs finds the following rules are needed for the preservation of public health, safety, and welfare and that an emergency exists within the meaning of Section 48 of Act No. 306 of the Public Acts of 1969, as amended, being S24.248 of the Michigan Compiled Laws.

#### **Definitions**

Rule 1. As used in these rules:

- A. "Current requirements" means the supply of fuel needed by an end-user or wholesale purchaser to meet its present priority end-use needs.
- B. "Department" means the department of Licensing and Regulatory Affairs.

- C. "Chairman" means the chairman of the Michigan Public Service Commission, Department of Licensing and Regulatory Affairs, or the designee thereof.
- D. "Motor fuel" means any of the various grades of motor gasoline (premium, regular, or unleaded, including gasoline/alcohol mixtures such as ethanol), and diesel fuel suitable for the operation of an internal combustion engine.
- E. "Person" means an individual, corporation, firm, governmental unit, organization, or any other establishment whatsoever.
- F. "Supplier" means a firm or a part of subsidiary of a firm, other than the department of defense, which is presently or during the last 12 months, supplies, sells, transfers, or otherwise furnishes, such as by consignment, motor fuel to wholesale purchasers or end-users, including, but not limited to, a refiner, importer, reseller, jobber, or retailer.

**Appeals; petition; stay order; response; decision.**

Rule 2. (1) A person aggrieved by a certification of priority end-use may file a written petition of appeal to the chairman. The petition shall include:

- A. Name and address of the petitioner.
- B. A concise statement of facts surrounding the case, including the reason for the appeal and relief sought.
- C. 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 which states that the information provided in the petition is true to the best of the petitioner's knowledge.

(2) The chairman shall, within 3 work days after the filing of a petition, serve a copy of the petition to known persons who might be adversely affected by the outcome of the appeal. Persons served with a petition may, not later than 5 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.

(3) Within 20 work days after the petition of appeal is filed, the chairman 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 is or her administrative remedies once a decision has been rendered on the appeal.

## H. Certificate of Priority End-Use

<b>DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS</b> MICHIGAN PUBLIC SERVICE COMMISSION P.O. Box ____, City, State ____																				
<b>CERTIFICATE OF PRIORITY END-USE</b> Please Print or Type - Application Must Be Legible and Signed. Return To The Above Address.																				
<b>PART I: IDENTIFICATION</b>																				
1. Date of Request <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Mo</td> <td style="width: 33%;">Da</td> <td style="width: 33%;">Yr</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> </tr> </table>			Mo	Da	Yr				1. EIN Number <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td><td style="width: 25px;"> </td> </tr> </table>											
Mo	Da	Yr																		
<b>PART II: SUPPLIER/SUPPLY DATA</b>																				
8. Supply Volumes for Requested Product (In Gallons)																				
2. Name of Company/Applicant Submitting This Request (Last name first if individual)			Month		Current Requirements		Actual Purchases for the Last Twelve Months													
			Year	Purchases	Year	Volume														
3. Mailing Address of Company/Applicant (Street, City, State, Zip Code, County)			(1) Jan																	
			(2) Feb																	
			(3) Mar																	
4. Name and Phone (Including area code) of Contact Person			(4) Apr																	
			(5) May																	
5. Name of Delivery Location (If different from 3)			(6) Jun																	
			(7) Jul																	
			(8) Aug																	
6. Address of Delivery Location (If different from 4) (Street, City, State, Zip Code, County)			(9) Sep																	
			(10) Oct																	
			(11) Nov																	
			(12) Dec																	
			(13) Total																	
9. Applicant's Classification (a) <input type="checkbox"/> Police Agency (b) <input type="checkbox"/> Fire Fighting Units (c) <input type="checkbox"/> Emergency Medical Services (d) <input type="checkbox"/> Other: Explain _____																				
<b>PART III: SUPPLIER/SUPPLY DATA</b> Storage Capacity:																				
10. Supplier Information (Enter the information requested below for each current supplier for motor gasoline. List on the first line the principal immediate supplier. If more than three, use an additional sheet.)																				
Name and Mailing (Street) Address (a)	City, State and Zip Code (b)	Brand Name (c)	% of Volume (d)	Name and Phone Number (Including area code) of Contact Person (e)																
11. Justification of Volumes Requested (Describe in detail the reasons justifying the requested volumes as normal and reasonable for intended use, and provide reasons why the product is needed. Use additional sheets as needed.)																				
<b>PART IV. CERTIFICATION (To Be Completed By All Applicants)</b>																				
I hereby certify that all information submitted as part of this application is true, accurate and complete to the best of my knowledge, that any quantity requested for priority use will be used only for that requested use, and that an amended application for a downward base period adjustment will be filed if the need for the volume assigned pursuant to this application declines.																				
Name of Applicant or Company Official	Title of Applicant or Company Official	Signature	Date Signed (month Day year)																	

# I. EO – Implementation of Minimum Purchase Plan

Executive Order No. \_\_ of 20\_\_

## *Authority and Scope*

Based on the authority vested in me by Act No. 191 of the Public Acts of 1982, as amended, and upon declaration of a state of energy emergency in the Executive Proclamation \_\_ -\_\_ of \_\_ under this act, I, \_\_\_\_\_, Governor, hereby implement a Minimum Motor Fuel Purchase Plan as set forth below to become effective in the (counties of \_\_, list specific counties or indicate “State of Michigan”), on 12:01 a.m., (month, day, year).

## *Minimum Purchase Requirements*

1. No person shall purchase \_\_\_\_\_ (insert type of fuel) from a retailer in any transaction for use in an automobile or other motor vehicle unless:<sup>6</sup>
  - A. The price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds \$\_\_ (a whole dollar amount to be determined at the time of implementation; alternatively, if the price is increasing rapidly a gallon amount could be specified).
  - B. In the case of any vehicle with an engine having less than six cylinders, or a rotary engine, the minimum purchase required shall be \$\_\_ (a whole dollar amount to be determined at the time of implementation).
2. In the event that a purchase of \_\_\_\_\_ (insert type of fuel) requires less fuel than the minimum purchase price amount, the minimum purchase price must be paid and the excess money forfeited to the retailer. Retailers may, at their discretion, allow purchasers who would otherwise forfeit \_\_\_\_\_ (insert type of fuel) purchase funds to substitute other items for sale at the retail establishment, to make up the difference between the minimum fuel purchase amount and the amount of fuel actually purchased.
3. Retailers may exercise the option to collect the minimum purchase amount prior to dispensing of \_\_\_\_\_ (insert type of fuel) into a motor vehicle or container. This may be facilitated with pre-pay and pay-at-pump options available on many fuel pumps.
4. Each retailer, within 14 days after the date of issuance of this Order, shall:

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<sup>6</sup> Gasoline is defined for the purpose of this order as any of the various grades of motor gasoline (premium, regular, or unleaded including gasoline/alcohol mixtures- gasohol), suitable for the operation of an internal combustion engine. Defined under ASTM Specification D 4814 . Diesel is defined as the various forms of diesel fuel (no. 1 and 2) used in high-speed diesel engines that are generally operated under uniform speed and load conditions, such as those in railroad locomotives, trucks, and automobiles as defined in ASTM Specification D 975.

- A. Prominently display a full and complete copy of these regulations in an accessible location, along with their days and hours of operation.
  - B. Post conspicuously the following message on each gasoline fuel pump: "Legal Minimum Purchase Requirement of \$\_\_ is in Effect."
5. This order does not modify, alter, or amend existing rules concerning transportation, storing, and filling of gasoline containers in effect, including the Michigan Flammable Liquid Regulation as follows:
- Rule 105 Filling Containers
- a) No portable container or containers holding in excess of a total of six gallons of Class I or II flammable liquids shall be filled for transportation from a service station in a passenger vehicle.
6. No retailer shall engage in any form of discrimination among purchasers except as provided for in this plan or by Executive Order of the Governor. For the purpose of this order "discrimination" means extending sales or preferential treatment which has the effects of frustrating the objection of this plan. Further, any practice which constitutes a means to obtain a price higher than the price at which the product is sold to the general public in order to provide preferential treatment is prohibited.
7. This order shall pre-empt any program for minimum purchase of sale by any local government.
8. Money collected exceeding the cost of actual fuel dispensed shall be deposited to the State's Emergency Fuel Fund.

***Exemption***

- 1. This minimum purchase requirement applies only to automobile or motor vehicles with a twelve gallon capacity fuel tank or greater. This minimum purchase price is subject to change as required while this rule is in effect due to increased gasoline amounts by the Governor.
- 2. The minimum purchase requirements apply between the hours of 6:00 a.m. and 10:00 p.m., daily.
- 3. Retailers must exempt the following types of motor vehicles from these regulations:
  - A. Police, fire, ambulance, or other emergency vehicles.
  - B. Buses, taxis, vanpools, or other commercial passenger carriers.
  - C. U.S. Postal Service vehicles.
  - D. Motorcycles or mopeds, and similar two wheel vehicles.
  - E. Local, county, and state government vehicles which provide essential services for the health, safety, and well-being of citizens.
  - F. Vehicles operating in an unusual emergency situation in the judgment of the retailers.

***Violation of This Order***

A retailer or consumer who knowingly violates this directive is guilty of a misdemeanor and punishable by a fine of not more than \$500. Each occurrence of a violation is a separate offense. The Attorney General or a Prosecuting Attorney of a county may bring an action in a court of competent jurisdiction to prevent a violation of this order or to compel a person to perform a duty imposed on the person under this Executive Order.

***Duration of Order***

This order shall remain in effect for \_\_\_day(s) from its effective date unless amended, superseded, or rescinded by further Executive Order. It shall expire 90 days after the proclamation of a state of energy emergency unless extended by concurrent resolution of the legislature as provided for in Act No. 191 of the Public Acts of 1982.

Dated: \_\_\_\_\_

Lansing, Michigan

\_\_\_\_\_

Governor

Filed with the Secretary of State and with the Department of State Police on

\_\_\_\_\_.





# J. EO – Implementation of Odd/Even Purchase Plan

Executive Order No. \_\_\_ of 20\_\_

## ***Authority and Scope***

Based on the authority vested in me by Act No. 191 of the Public Acts of 1982, as amended, and upon declaration of a state of energy emergency in the Executive Proclamation \_\_ of \_\_ under this act, I, \_\_\_\_\_, Governor, hereby implement an Odd/Even Gasoline Purchase Plan as set forth below to be effective in the (counties of \_\_\_\_\_, list specific counties or indicated “State Of Michigan”), on 12:01 a.m., (Month, Day, Year).

## ***Odd/Even Gasoline Purchase Requirements***

At the retail level, gasoline (and/or) diesel fuel<sup>1</sup> shall be dispensed into vehicles with a license plate ending in an odd number (1, 3, 5, 7 and 9) only on odd number days of the month (first, third, fifth, seventh, and ninth). Personalized license plates and any other license plates without numbers shall be defined as odd. Examples of odd day license plates are: BBB 1333, KBC 475, and “BERTHA”.

1. At the retail level, gasoline (and/or) diesel fuel shall be dispensed into vehicles with a license plate ending in zero or an even number (0,2,4,6 and 8) only on even number days of the month ( second, fourth, sixth, eighth, and tenth (zero)). Examples of even day license plates are: BBB 020, RMP 768, and KBC 776.
2. If a vehicle license plate contains both letters and numbers and the last digit is a letter, the last or only number digit will determine whether sale of gasoline is eligible on an odd or even day. Examples of license plates containing letters as last digits are: 123 FT (Odd day), 764 NT (Even Day), and 468 GN (Even Day).
3. For any calendar month in which there are 31 days, and in February of a leap year, sales shall be made on the last day of the month without regard to the digits of the license plates.

## ***Exemptions***

Retailers must exempt the following types of motor vehicles from these regulations:

1. Police, fire, ambulance, or other emergency vehicles.
2. Buses, taxis, vanpools, or other commercial passenger carriers.
3. U.S. Postal Service vehicles.
4. Motorcycles or mopeds, and similar two wheel vehicles.

5. Vehicles bearing out-of-state license plates registered.
6. Vehicles registered or operated by a person with a current valid driver's license from outside the area under the minimum purchase order.
7. Local, county, state and federal government vehicles which provide essential services for the health, safety, and wellbeing of citizens.
8. Vehicles operating in an unusual emergency situation in the judgment of the retailers.
9. Vehicles with license plates with handicap designation.

***Violation of This Order***

A retailer or consumer who knowingly violates this directive is guilty of a misdemeanor and punishable by a fine of not more than \$500. Each occurrence of a violation is a separate offense. The Attorney General or a Prosecuting Attorney of a county may bring an action in a court of competent jurisdiction to prevent a violation of this order or to compel a person to perform a duty imposed on the person under this Executive Order.

***Duration of Order***

This order shall remain in effect for \_\_\_ days from its effective date unless amended, superseded, or rescinded by further Executive Order. It shall expire 90 days after the proclamation of state of energy emergency unless extended by concurrent resolution of the legislature as provided for in Act No. 191 of the Public Acts of 1982, as amended.

Dated: \_\_\_\_\_

Lansing, Michigan

\_\_\_\_\_  
Governor

Filed with the Secretary of State and with the Department of State Police on

\_\_\_\_\_.

<sup>1</sup> Gasoline is defined for the purpose of this order as any of the various grades of motor gasoline (premium, regular, or unleaded including gasoline/alcohol mixtures –gasohol), suitable for the operation of an internal combustion engine (defined under ASTM Standard D 439-70). Diesel is defined as the various forms of diesel fuel (no. 1 and 2) used in high-speed diesel engines that are generally operated under uniform speed and load conditions, such as those in railroad locomotives, trucks, and automobiles as defined in ASTM Specification D 975

## K. Clean Air Act Section 211(c)(4)(C)

Source: <http://www.law.cornell.edu/uscode/text/42/7545>

(C)

(i) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section [7410](#) of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section [7410](#) of this title approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

- (II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;
- (III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;
- (IV) the waiver applies to all persons in the motor fuel distribution system; and
- (V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term “motor fuel distribution system” as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of August 8, 2005, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v) <sup>[3]</sup> Nothing in this subparagraph shall—

- (I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and
- (II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(v)

- (I) <sup>[3]</sup> The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.
- (II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after August 8, 2005.
- (III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

**(IV)** Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel—

**(aa)** completely replaces a fuel on the list published under subclause (II); or

**(bb)** does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

**(V)** The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

**(VI)** Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b) of this section, including any fuel additive registered in accordance with subsection (b) of this section after August 8, 2005.

## **L. 2005 Energy Emergency Executive Orders**

### **Executive Order No.2005 - 16**

#### **STATE OF ENERGY EMERGENCY**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 3 of 1982 PA 191, MCL 10.83, authorizes the Governor to declare a State of Energy Emergency upon notification of an impending energy emergency by the Energy Advisory Committee, or upon the Governor's own initiative, if the Governor finds that an energy emergency exists or is imminent;

WHEREAS, the destruction caused by Hurricane Katrina in Louisiana, Mississippi, and Alabama, has degraded significantly the supply of crude oil from the Gulf Coast to Midwest oil refineries, including in Michigan;

WHEREAS, the effects of Hurricane Katrina have also impacted seriously the supply and price of gasoline, diesel fuel, and other petroleum products in the Midwest and Michigan;

WHEREAS, the Energy Advisory Committee reports that the current situation has affected the transportation of petroleum products in Michigan and the ability to supply gasoline that meets federal air quality requirements;

WHEREAS, the Energy Advisory Committee today notified the Governor that based on information available to the Committee from the Michigan Public Service Commission, other state agencies, and other sources of information an energy emergency is imminent in this state due to the effects of Hurricane Katrina;

WHEREAS, the Energy Advisory Committee also has recommended that the Governor declare a State of Energy Emergency so that appropriate action may be taken;

WHEREAS, it is in the best interests of the State of Michigan that appropriate measures be taken in response to an imminent energy emergency to ensure that petroleum supplies will remain sufficient and to assure the health, safety, and welfare of Michigan residents and visitors;

NOW, THEREFORE, I, JENNIFER M. GRANHOLM, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and 1982 PA 191, MCL 10.81 to 10.87, order the following:

1. A State of Energy Emergency is declared in the State of Michigan. Pursuant to Section 3 of 1982 PA 191, MCL 10.83, the State of Energy Emergency is effective until the earlier of either of the following:

- a. A finding by the Governor that the energy emergency no longer exists.
- b. Tuesday, November 29, 2005.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 31st day of August in the year of our Lord, two thousand and five.

---

JENNIFER M. GRANHOLM  
GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE



## **Executive Order No.2005 - 17**

### **STATE OF ENERGY EMERGENCY WAIVER OF REGULATIONS RELATING TO MOTOR CARRIERS AND DRIVERS TRANSPORTING GASOLINE, DIESEL FUEL, AND JET FUEL**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 4 of 1982 PA 191, MCL 10.84, during a declared State of Energy Emergency the Governor may by executive order suspend a statute, order, rule of a state agency, or specific provision of a statute, rule, or order if strict compliance with the statute, order, rule, or a specific provision of the statute, rule, or order will prevent, hinder, or delay necessary action in coping with the energy emergency;

WHEREAS, based on the effects of Hurricane Katrina, Executive Order 2005-16 declared a State of Energy Emergency in this state beginning on August 31, 2005;

WHEREAS, the United States Department of Transportation Federal Motor Carrier Safety Administration has declared that a regional transportation emergency exists in the Midwest Region (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin) in the highway transportation of certain petroleum products;

WHEREAS, as a result of the declared regional transportation emergency, the Federal Motor Carrier Safety Administration, acting pursuant to 49 CFR 390.23, has exempted motor carriers and drivers transporting gasoline, diesel fuel, and jet fuel from 49 CFR Parts 390-399 to address transportation needs arising from the impact of Hurricane Katrina. The exemption is effective from 1:00 p.m. EDT, August 31, 2005 until 1:00 p.m. EDT, September 14, 2005;

WHEREAS, in addition, appropriate measures must be taken at the state level in response to the energy emergency to ensure that petroleum supplies will remain sufficient and to assure the health, safety, and welfare of Michigan residents and visitors;

NOW, THEREFORE, I, JENNIFER M. GRANHOLM, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and 1982 PA 191, MCL 10.81 to 10.87, order the following:

1. Motor carriers and drivers transporting gasoline, diesel fuel, and jet fuel in Michigan to address transportation needs arising from the impact of Hurricane Katrina are exempt from compliance with any applicable state statute, order, or rule substantially similar to 49 CFR Parts 390-399. Any such provision of a state statute, order, or rule is suspended. The exemption and suspension exemption is effective from the time of the issuance of this Order until 1:00 p.m. EDT, September 14, 2005.

2. This order applies only to gasoline, diesel fuel, and jet fuel. No other petroleum products are covered by the exemption and suspension under this Order.

3. Nothing in this Order shall be construed as an exemption from applicable controlled substances and alcohol use and testing requirements (49 CFR Part 382 and any similar state statute, order, or rule), the commercial driver's license requirements (49 CFR Part 383 and any similar state statute, order, or rule), the financial responsibility requirements (49 CFR Part 387 and any similar state statute, order, or rule), applicable size and weight requirements, or any portion of federal regulations not specifically identified.

4. Motor carriers or drivers currently subject to an out-of-service order are not eligible for the exemption and suspension until the out-of-service order expires or the conditions for rescission have been satisfied.

5. The Federal Motor Carrier Safety Administration has required that drivers for motor carriers operating under the Declaration of Emergency issued under federal regulations must have a copy of the federal Declaration of Emergency in their possession. A copy of that Declaration of Emergency is attached to this Order.

6. The Motor Carrier Division of the Department of State Police shall coordinate state compliance with this Order.

This Order is effective until the earliest of any of the following:

a. A finding by the Governor that the State of Energy Emergency declared under Executive Order 2005-16 no longer exists.

b. Rescission of this Order.

c. 1:00 p.m. EDT, Wednesday, September 14, 2005.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 31st day of August in the year of our Lord, two thousand and five.

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JENNIFER M. GRANHOLM  
GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE

## **Executive Order No.2005 - 18**

### **STATE OF ENERGY EMERGENCY TEMPORARY SUSPENSION OF RULES FOR GASOLINE VAPOR PRESSURE**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 4 of 1982 PA 191, MCL 10.84, during a declared State of Energy Emergency the Governor may by executive order suspend a statute, an order, a rule of a state agency, or a specific provision of the statute, rule, or order if strict compliance with the statute, order, rule, or a specific provision of the statute, rule, or order will prevent, hinder, or delay necessary action in coping with the energy emergency;

WHEREAS, based on the effects of Hurricane Katrina, Executive Order 2005-16 declared a State of Energy Emergency in this state beginning on August 31, 2005;

WHEREAS, appropriate measures must be taken in response to the energy emergency to ensure that gasoline supplies will remain sufficient and to assure the health, safety, and welfare of Michigan residents and visitors;

NOW, THEREFORE, I, JENNIFER M. GRANHOLM, Governor of the State of Michigan, pursuant to powers vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

1. Regulation No. 561, entitled, "Dispensing Facility Reid Vapor Pressure," promulgated by the Laboratory Division of the Department of Agriculture, 1997 AACRS, R 285.561.1 to 285.561.10, is suspended for the duration of the State of Energy Emergency declared in Executive Order 2005-16.

The Department of Agriculture is responsible for coordinating state compliance with this Order.

This Order is effective upon filing.

Given under my hand and the Great Seal of the State of Michigan this 31st day of August in the year of our Lord, two thousand and five.

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JENNIFER M. GRANHOLM  
GOVERNOR

BY THE GOVERNOR:

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SECRETARY OF STATE

# M. Emergency Relief from FMCSA Safety Regulations

## 49 CFR 390.23

Federal regulations (49 CFR Part 390.23) allow for temporary relief from the safety regulations to any motor carrier or driver operating a commercial motor vehicle (CMV) to provide direct emergency assistance during an emergency. Specifically, relief is provided from 49 CFR Parts 390 through 399 of the FMCSR. Below is a brief synopsis of the safety regulations for which the emergency exemptions apply.

### 49 CFR Part 390 – General Applicability

- Defines which drivers and vehicles are covered by 49 CFR Parts 390-399
- Establishes requirements for maintaining an accident register
- Establishes registration requirements to obtain a USDOT number
- Defines marking (identification) requirements for CMVs
- Defines recordkeeping locations

### 49 CFR Part 391 – Qualification of Drivers

- Establishes qualification standards for drivers to operate a CMV including:
  - Age and drivers' license
  - Employment application process
  - Employment background checks
  - Annual review of driving record
  - Road tests
  - Medical qualifications
- Establishes requirements for maintaining a complete driver qualification file

### 49 CFR Part 392 – Driving of Commercial Motor Vehicles

- Requires drivers of CMVs to comply with all State and Local traffic laws
- Establishes prohibition from operating a CMV while ill, fatigued, or while using or recently used alcohol or drugs
- Establishes standards for slowing and stopping at railroad grade crossings
- Establishes standards for using emergency signals and flares when a CMV stops or becomes inoperable at the roadside
- Establishes general precautions for the operation of CMVs

### 49 CFR Part 393 – Parts and Accessories Necessary for Safe Operation of a CMV

- Establishes CMV equipment standards, including:
  - Lights, reflectors and electrical equipment
  - Brakes and braking systems
  - Window/windshield glazing and construction
  - Fuel systems
  - Coupling devices
  - Tires and wheels

- Frame and suspension systems
- Mirrors, windshield wipers, horns, exhaust systems and
- Other miscellaneous CMV parts and accessories
- Establishes standards for the proper loading and securement of freight

49 CFR Part 394 – Reserved

49 CFR Part 395 – Hours of Service of Drivers

- Establishes maximum driving limits for drivers of CMVs
- Establishes record-keeping requirements for drivers’ hours-of service
- Establishes standards for hours-of service automatic on board recorders

49 CFR Part 396 – Inspection, Repair and Maintenance

- Establishes for the proper inspection, repair and maintenance of CMVs
- Establishes prohibitions for operating a CMV in an unsafe mechanical condition
- Establishes record-keeping requirements for inspection, repair and maintenance activities
- Establishes qualification standards for persons performing inspection, repair and maintenance duties

49 CFR Part 397 – Transportation of Hazardous Materials – Driving and Parking Rules

- Establishes requirements for the safe parking and monitoring of CMVs when transporting hazardous materials
- Establishes prohibitions regarding smoking in or around a CMV when transporting hazardous materials
- Establishes requirements for safe routing of a CMV when transporting hazardous materials

49 CFR Part 398 – Transportation of Migrant Workers

- Establishes standards for the safe transportation of migrant workers
- Standards are a “streamlined” version of 49 CFR Parts 391-396 defined above

49 CFR Part 399 – Employee Safety and Health Standards

- Establishes standards for safe entry and egress from a CMV
- Establishes testing and maintenance standards for the steps, handholds, and or deck plates used for safe entry and egress from a CMV

**While 49 CFR Part 390.23 allows for temporary relief from the safety regulations, the regulation does not allow FMCSA to suspend requirements for a Commercial Drivers License (49 CFR Part 383), controlled substances and alcohol testing (49 CFR Part 382) or motor carrier financial responsibility/insurance (49 CFR Part 387).**

## **N. NASEO Guidance on FMCSA Regulations**

### **Guidance for States on Relief from Federal Motor Carrier Safety Regulations in an Energy Emergency.**

Disclaimer: This guidance is intended only to provide a summary and explanation of how and when regulatory relief is granted. The regulations govern the specific requirements for regulatory relief and should be first reviewed, and the FMCSA consulted as needed, if there are any questions on how and when they apply. This guidance was prepared by the National Association of State Energy Officials with input from the Federal Motor Carrier Safety Administration.

#### **THE FOLLOWING ORGANIZATION PREPARED THIS REPORT:**

##### **National Association of State Energy Officials**

2107 Wilson Boulevard, Suite 850, Arlington, Virginia 22201-3091

Telephone: 703.299.8800; Fax: 703.299.6208

Website: <http://www.naseo.org/energyassurance>

#### **Introduction**

As part of their Energy Assurance Plans, states should address how relief from Federal Motor Carrier Safety Regulations (FMCSR) can aid in the response to an energy emergency. Certain FMCSR1 allow temporary emergency relief from the safety regulations of any motor carrier or driver operating a commercial motor vehicle (CMV) to provide direct emergency assistance during an emergency declared by a Governor or other authorized official. Emergency assistance supplements state and local efforts and capabilities to save lives or property or to protect public health and safety as a result of an emergency.

This guidance explains how this relief is implemented under a declared emergency, what parts of the rules are waived, and how it is placed in effect. To further assist states in taking this action a draft executive order is included. This order will need to be tailored to the circumstances and the statutory authority of each state. Also following the executive order are a brief list of suggested implementation actions which again should be adapted as needed to the policies and practices of each State. It is NASEO's recommendation that this contingency be included in State Energy Assurance plans as appropriate.

Emergency relief from the FMCSR is triggered under a declared emergency following an event that results in reduced fuel supplies or required transportation capacity to resupply the affected area. Events could be caused by the unanticipated shutdown of a large refinery or of multiple refineries; a disruption to a major petroleum pipeline; a large-scale power blackout; or other similar events. Relief may also be necessitated after a natural disaster, which damages or reduces the capacity of energy infrastructure that is needed to meet state and regional energy demands. Even if energy infrastructure is not damaged, an increase in fuel supplies may be needed to support an overall recovery effort.

Emergency relief from the safety regulations has been commonly referred to by the states as a waiver of driver hours-of-service. However, for motor carriers and CMV drivers

qualifying for the exemption, a declaration of emergency invokes 100 percent exemption from all of the safety regulations contained under regulations 49 CFR Parts 390—399 (see below). This is true regardless of whether the emergency declaration specifically states the full extent of the Federal exemption.

- ◆ Part 390—General Applicability
- ◆ Part 391—Qualification of Drivers
- ◆ Part 392—Driving of Commercial Motor Vehicles
- ◆ Part 393—Parts and Accessories Necessary for Safe Operation of a CMV
- ◆ Part 395—Hours-of-Service of Drivers
- ◆ Part 396—Inspection, Repair and Maintenance
- ◆ Part 397—Transportation of Hazardous Materials - Driving and Parking Rules
- ◆ Part 398—Transportation of Migrant Workers
- ◆ Part 399—Employee Safety and Health Standards

A summary of the provisions of each of these parts is provided below.

When an emergency is declared, truck and bus activities involving transportation and other relief services for the immediate restoration of essential services (e.g., electricity, medical care, sewer, water, telecommunications) or essential supplies (e.g., food, fuel) are exempt from most of the FMCSR.<sup>2</sup> The emergency relief does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property have passed. Motor carriers are not required to obtain approval from the FMCSA prior to participating in the emergency relief effort. The regulatory relief is automatically granted without further action by any motor carriers who are supplying the area covered by the emergency declaration.

### **What is an Emergency?**

Under 49 CFR §390.5, the definition of an emergency means any hurricane, tornado, storm (e.g., thunderstorm, snowstorm, ice storm, blizzard, sandstorm), high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, drought, forest fire, explosion, blackout or other occurrence, natural or man-made, which interrupts the delivery of essential services (e.g., electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (e.g., food, fuel) or otherwise immediately threatens human life or public welfare, provided such hurricane, tornado, or other event results in a declaration of an emergency by the President of the United States, the Governor of a State, or their authorized representatives having authority to declare emergencies; by the Federal Motor Carrier Safety Administration (FMCSA) Field Administrator for the geographical area in which the occurrence happens; or by other Federal, State or local government officials having authority to declare emergencies.

### **Do Governors need to take an action beyond issuing the emergency or disaster declaration?**

Once an emergency is declared the regulatory relief is automatically in effect even if the state does not explicitly request that this relief be granted. However a state may declare an emergency or disaster and take actions under the declaration stating that it provides this regulatory relief and specifying the commodities covered, such as fuel, equipment, or supplies needed to repair damaged energy infrastructure. It is the state's responsibility to designate if the emergency is declared in all or only part of the state.

Governors are best suited to determine the need for a declaration of emergency in their state and have the authority to issue such a declaration. The rulemaking history goes back to 1992 in response to Hurricane Hugo. At this time, the first Federal regulatory relief standard was introduced. In 1995, it was amended in wake of the response to Hurricane Andrew by allowing state and local authorities to be included.

**Are motor carriers exempt from the safety regulations throughout their route even though they may be driving through one or more states in order to provide relief to another state?**

A declaration of emergency by the Governor (or other authorized official) provides the temporary exemption to any motor carrier providing relief to a state (or affected area of a state) regardless of where the motor carrier's starting point. This means trucks drivers passing through one or more states to service the needs of another state where an emergency or disaster has been declared are covered by the regulatory relief if they are hauling supplies needed in the recovery effort. In the event of a fuel shortage this would include any refined petroleum products, and any biofuels including biodiesel and ethanol. The only requirement is that the motor carrier be providing direct emergency assistance to the area in which an emergency has been declared.

Vehicle registration and fuel tax compliance are administered by the states through the International Registration Plan (IRP) and International Fuel Tax Agreement (IFTA) respectively. Motor carriers should work with the states along their route to determine whether trip permits or emergency relief are available for registration and fuel tax.

Truck size and weight relief is a state-by-state matter, where the Federal Highway Administration (FHWA) is the lead Federal agency. Some states have size and weight or procedural reliefs in place for the emergency. Motor carriers desiring oversize/overweight permits should work with the states along their route. FHWA has more size and weight information available at <http://www.fhwa.dot.gov>.

**Are motor carriers required to have documentation on-board their vehicles identifying the drivers and vehicles used in the emergency relief effort?**

No. FMCSA does not require motor carriers to have paperwork documenting their involvement in the emergency relief effort while the declaration is in effect. However, FMCSA recommends that motor carriers have documents to show to enforcement officials in the event the vehicle is stopped prior to reaching the scene of the emergency. The documents may also be needed to enter into the emergency area.



Drivers should have a manifest with them that clearly shows a destination for delivery of essential service or commodity in the state declaring the emergency. When the emergency declaration ends or no longer provides direct support, drivers must resume their compliance with all safety regulations.

States can facilitate the implementation of emergency relief by notifying their motor carrier enforcement agency and the trucking industry that emergency relief from the safety regulations is in effect and for how long. States should make the emergency declaration and any relevant executive order available on a state website and provide a link to the documents and recommend, but not require, that motor carriers serving the emergency area should have a copy of the declaration with them to help facilitate their ability to assist in the recovery effort.

The FMCSA website lists known emergency declarations in the “News and Alerts” box at the top of its homepage at <http://www.fmcsa.dot.gov>.

### **How long does the emergency relief last?**

The emergency relief remains in effect for the duration of the emergency (as defined in 49 CFR 390.5) or 30 days, whichever is less. Only FMCSA Field Administrators may extend the 30-day limit for an exemption from the FMCSR if additional emergency relief efforts are necessary on a regional or local basis. Upon termination of support for the emergency, a driver may not drive until he or she has met the requirements of 49 CFR 395.3(a) and 395.5(a) and the driver has had at least 34 consecutive hours off duty when the driver has been on duty more than 60 hours in the previous 7 days or more than 70 hours in the previous 8 days.

### **What specific safety regulations are waived?**

Following is a summary of the safety regulations that are waived or exempted in a declared emergency.

#### **49 CFR Part 390—General Applicability**

- ◆ Defines which drivers and vehicles are covered by 49 CFR Parts 390—399
- ◆ Establishes requirements for maintaining an accident register
- ◆ Establishes registration requirements to obtain a USDOT number
- ◆ Defines marking (identification) requirements for CMVs
- ◆ Defines recordkeeping locations

#### **49 CFR Part 391—Qualification of Drivers**

- ◆ Establishes qualification standards for drivers to operate a CMV including:
  - Age and driver’s license
  - Employment application process
  - Employment background checks
  - Annual review of driving record
  - Road tests
  - Medical qualifications

- ◆ Establishes requirements for maintaining a complete driver qualification file

#### 49 CFR Part 392—Driving of Commercial Motor Vehicles

- ◆ Requires drivers of CMVs to comply with all State and Local traffic laws
- ◆ Establishes prohibition from operating a CMV while ill, fatigued, or while using or recently used alcohol or drugs
- ◆ Establishes standards for slowing and stopping at railroad grade crossings
- ◆ Establishes standards for using emergency signals and flares when a CMV stops or becomes inoperable at the roadside
- ◆ Establishes general precautions for the operation of CMVs

#### 49 CFR Part 393—Parts and Accessories Necessary for Safe Operation of a CMV

- ◆ Establishes CMV equipment standards, including:
  - Lights, reflectors and electrical equipment
  - Brakes and braking systems
  - Window/windshield glazing and construction
  - Fuel systems
  - Coupling devices
  - Tires and wheels
  - Frame and suspension systems
  - Mirrors, windshield wipers, horns, exhaust systems and
  - Other miscellaneous CMV parts and accessories
- ◆ Establishes standards for the proper loading and securement of freight

#### 49 CFR Part 394—Reserved

#### 49 CFR Part 395—Hours of Service of Drivers

- ◆ Establishes maximum driving limits for drivers of CMVs
- ◆ Establishes record-keeping requirements for drivers' hours-of service
- ◆ Establishes standards for hours-of service automatic on board recorders

#### 49 CFR Part 396—Inspection, Repair and Maintenance

- ◆ Establishes for the proper inspection, repair and maintenance of CMVs
- ◆ Establishes prohibitions for operating a CMV in an unsafe mechanical condition
- ◆ Establishes record-keeping requirements for inspection, repair and maintenance activities
- ◆ Establishes qualification standards for persons performing inspection, repair and maintenance duties

#### 49 CFR Part 397—Transportation of Hazardous Materials—Driving and Parking Rules

- ◆ Establishes requirements for the safe parking and monitoring of CMVs when transporting hazardous materials
- ◆ Establishes prohibitions regarding smoking in or around a CMV when transporting hazardous materials

- ◆ Establishes requirements for safe routing of a CMV when transporting hazardous materials

#### 49 CFR Part 398—Transportation of Migrant Workers

- ◆ Establishes standards for the safe transportation of migrant workers
- ◆ Standards are a “streamlined” version of 49 CFR Parts 391—396 defined above

#### 49 CFR Part 399—Employee Safety and Health Standards

- ◆ Establishes standards for safe entry and egress from a CMV
- ◆ Establishes testing and maintenance standards for the steps, handholds, and or deck plates used for safe entry and egress from a CMV

While 49 CFR Part 390.23 allows for temporary relief from the safety regulations, the regulation does not allow FMCSA to suspend requirements for a Commercial Driver’s License (49 CFR Part 383), controlled substances and alcohol testing (49 CFR Part 382) or motor carrier financial responsibility/insurance (49 CFR Part 387).

#### **Where is more Information available?**

For more information, contact the nearest FMCSA field office. Contact information is available online: <http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.aspx>.

#### **State Implementation of Relief from Federal Motor Carrier Safety Regulations**

The following is sample language that can be adapted for used in a state emergency, disaster, or energy emergency declaration where the state wishes to be explicit that Federal Motor Carrier Safety Regulations (FMCSR) are waived (including Driver Hours of Service) along with other safety provisions to facilitate the recovery effort. This is only a sample and should be adapted as needed to conform to the statutory and regulatory requirements of each state.

This action should be considered if fuel supplies have been seriously impacted by an emergency that has broadly impacted the petroleum industry capability to supply the affected area or that the recovery effort requires additional fuel supplies to speed the recovery effort.

**Executive Order No. *[Insert E.O. Number and Year]***  
**State of *[Energy]* Emergency *[Disaster]***  
**Waiver of Select Regulations Covering Motor Carriers and Drivers**  
**Transporting *[insert fuels to be covered by the order e.g. gasoline, diesel fuel, propane,***  
***#2 home heating oil, etc.]***

WHEREAS, *[Insert citation to legal authorities' that give the Governor the authority to take the actions contained in the order]*

WHEREAS, *[Insert a brief description of the event(s) that have required this action];* and

WHEREAS, *[Insert a brief description of the consequences and impacts of the event(s)];* and

WHEREAS, it is in the best interests of the State of *[Insert Name]* to provide for the safe transportation of petroleum products within this State, and to assure that petroleum product supplies will remain sufficient to protect the health, safety, and economic well-being of the State's residents and visitors; and

WHEREAS, this declaration of emergency *[disaster]* is recognized by the Federal Motor Carrier Safety Administration (FMCSA) to cause, and to place into immediate effect relief from Federal Motor Carrier Safety Regulations (FMCSR) contained in 49 CFR Parts 390-399; and *[If applicable, insert any corresponding or equivalent reference in State Law.]*

WHEREAS, all of the safety regulations contained in 49 CFR Parts 390-399 are waived, including Driver Hours of Service, however motor carriers are encouraged to comply with the safety regulations which do not otherwise restrict or impede their ability to assist in the recovery effort in the area for which an emergency has been declared.

NOW, THEREFORE, I, *[Insert Name]*, Governor of the State of *[Insert Name]*, by virtue of the power and authority vested in the Governor by *[Insert Legal reference to authorities]*, order the following:

1. A State of *[Energy]* Emergency *[Disaster]* is declared in the State of *[Insert Name]* for *[Insert the names of the counties in which this declaration applies or specify that it is a Statewide declaration]*
2. Relief from Federal Motor Carrier Safety Regulations contained in 49 CFR Parts 390-399; and *[If applicable, insert any corresponding or equivalent reference in State Law as may be needed].*
3. This order applies only to *[Insert fuels to be covered by this order e.g. gasoline, diesel fuel, #2 home heating oil, propane, biofuels, etc.]* No other petroleum products or other fuels are covered by the exemption and suspension under this Order.
4. The relief from these regulations shall remain in effect for the duration of the emergency or thirty (30) days whichever is less. Only the FMCSA Field Administrator can extend the thirty (30) day limit for an extension of relief from the federal safety regulations.

5. Nothing in this Order shall be construed as an exemption from applicable controlled substances and alcohol use and testing requirements (49 CFR Part 382 and *[insert applicable State statute, order, and/or rule]*), the commercial driver's license requirements (49 CFR Part 383 and *[insert applicable State statute, order, and/or rule]*), the financial responsibility requirements (49 CFR Part 387 and *[insert applicable any similar State statute, order, and/or rule]*), applicable size and weight requirements, or any portion of federal and State regulations not specifically identified.
6. Motor carriers or drivers currently subject to an out-of-service order are not eligible for the exemption and suspension until the out-of-service order expires or the conditions for rescission have been satisfied.

Dated:

*[Insert City, State]*

*[Governor's name and the date]*

File with the *[Insert State Agency name as may be required, if not eliminate this part]*, on

### **Suggested communications and implementation procedures:**

States can facilitate the implementation of the waiver to the Federal Motor Carrier Safety Regulations by taking the following steps:

1. Post a copy of the Governor's (or other authorized official's) emergency declaration on a publicly available website and provide a link to the emergency declaration as part of notifications made to state, local, and federal agencies and the motor carrier industry.
2. Notify the motor carrier safety enforcement agency of state government that an emergency has been declared, in what part of the state it been declared, and that as a result of this declaration the safety regulations are temporarily waived.
3. Provide notification of emergency declaration to the FMCSA state office and regional administrator.
4. Notify motor carrier industry associations or motor carriers servicing the state directly through any automated system to quickly communicate with the industry. This communication should encourage, but not require, drivers transporting fuels to the areas in which an emergency has been declared to have with them a copy of the emergency declaration and a copy of the website link from the declaration can be printed.
5. Provide notification to State Energy Emergency Assurance Coordinators in those states within the region that may have motor carriers passing through them to provide relief in the affected state. It is also advisable to coordinate with neighboring states in advance of this declaration, if possible.

## **Factors which States Should Consider in Assessing the Need to Make a Request for Regional Driver Hours Waivers:**

### **Weather**

1. Is snow or ice sufficiently severe that full recovery of highways and primary roads will take more than two days? (The state department of transportation and or county road commissions may be able to provide this information.)
2. Is snow or ice sufficiently severe that full recovery of secondary and rural roads will take two to four days? (Check with the county road commission or county emergency management coordinators.)
3. Is cold sufficiently severe that fuel use by significant numbers of households will outstrip the ability of local retailers (operating under normal hours of service limitations) to replenish critically-low home fuel tanks?
4. Is cold sufficiently severe that fuel transporters (operated by jobbers or retailers under normal hours of service limitations) are unable to replenish the supplies of retail outlets in the face of increased consumer demand?
5. Have the Heating Degree Days substantially exceeded normal for a prolonged period?
6. Which counties have been declared under a state of emergency of any sort?

Weather points to emphasize:

- A. Regional emergencies should not be requested solely because of severe weather; the severe weather must be shown to have a significant and prolonged effect on the supply system that threatens human life or public welfare.
- B. The simple fact that one or two retailers are in trouble should not alone be grounds for requesting a regional emergency. Retailers that mismanage supplies or that make no extraordinary efforts to obtain extra supplies or contract with additional drivers of jobbers should not be seen as grounds for granting a waiver.
- C. The simple fact that some "will-call" customers are on the verge of running out of fuel because of their own mismanagement of their supply (e.g. calling one day before they are likely to run out) should not be grounds for a regional emergency. The inability of retailers to supply "keep full" customers is a better barometer of inability to meet demand.

### **Supply Shortage and Infrastructure Damage**

1. Are terminal lines or product shortages the result of product allocations by a single supplier within the region?
2. What is the state and regional inventory picture how does it compare to last year, the recent average for the month or the high and lows for the month?
3. Has a pipeline, refinery, or terminal been damaged?
4. Is a damaged pipeline refinery, or terminal dispensed reduced quantities of product; has distribution actually stopped?

5. How long is a damaged pipeline, refinery, or terminal expected to be at reduced capacity or shut down?
6. What is the geographic range of product distribution from the pipeline, refinery, or terminal?
7. Are terminals within the region out of a given product and if so for how long?
8. Are terminal outages limited to one or two terminals within the region?
9. Are alternative suppliers available within the region?
10. Can transporters reach alternative suppliers within normal hours of service limitations?
11. Are there others mitigating factors that will lessen the threat to the public (e.g., mild weather, alternative product availability).

Supply Shortage and Infrastructure Damage points to emphasize:

- A. A regional emergency should not be declared solely because of outages or lines at one or a few terminals, unless obtaining fuel from alternative suppliers is impossible within normal hours of service limitations.
- B. A regional emergency should not be declared if consumer demand for a given product is low at the time of the supply shortage (e.g., warm weather during a propane shortage), unless the shortage becomes sufficiently long that retailers are unable to replenish their own supplies.
- C. A regional emergency should not be declared if alternative products are readily available (e.g., low sulfur on-highway diesel fuel in place of high sulfur no.2 home heating oil).
- D. Weather factors can exacerbate supply problems or infrastructure damage; the combined effects of different factors that by themselves would not result in emergencies should be considered.

## **Transportation**

1. Have jobbers and/or retailers pressed all qualified drivers into service?
2. Have or will all qualified drivers exhaust their hours of availability under normal hours of service limitations?
3. Have all available trucks been placed into service?
4. Have third party carriers been contacted and found to be not available?
5. Are there lines at fuel terminals?
6. Are there lines at fuel terminals during all hours, including nighttime?
7. Are trucks lined up at fuel terminal with waits longer than four hours to load supplies, if so, during what hours of the day and/or night have lines been observed?
8. Are lines at terminals isolated to one or two specific terminals within the region?
9. What other actions have the industry take to avoid the need to grant Driver hour waivers?

Transportation points to emphasize:

- A. The fact that fuel truck drivers require special training and certification is a limitation on the ability to employ extra drivers during emergencies. However, retailers and jobbers should make efforts to hire all available drivers and to place into service all available trucks during emergencies or shortages.
- B. Long waits at terminals during the day do not demonstrate a shortage of product or a need for driver hour's waivers if those lines disappear at night.
- C. Lines at one terminal and the absence of lines at another may signify price shopping rather than product shortages or transportation disruptions. Waivers should not be granted where terminal lines are the result of economic decisions.

## **Regional Effect**

- 1. Which states have been directly affected by severe weather (cold, ice, or snow)?
- 2. How many states are served by terminals that are out of product or at which there are long lines?
- 3. How many states are served by pipelines that are out of service or that have restricted supplies?
- 4. How do affected states obtain fuel supplies; is travel outside the state vital to obtaining product?
- 5. Has severe weather affected a state that significant numbers of transporters from another state need to travel in to obtain supplies?

Regional Effect points to emphasize:

- A. Uniformity in hours of service requirements among affected states is desirable. If several states are similarly affected, they should receive (or be denied) the same relief.
- B. Consideration should be given to the fact that states with cold-related emergencies (heightened demand) may draw supplies from a state that is less affected by the same problem; drivers serving an emergency in one state will still need to cross state lines to obtain product.
- C. Consideration should be given to where drivers will need to go to obtain alternative supplies in the event of severe shortage or extreme demand. The preceding information is intended to serve as a general guideline. It is not expected that information answering all of these questions will be available. However, to the extent that states can provide a good detailed assessment of the problem the potential for the appropriate granting of waivers is more likely.