

**RULES
OF
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
OFFICE OF ENERGY PROGRAMS**

**0400-60-01
STATE SET-ASIDE PROGRAM**

TABLE OF CONTENTS

0400-60-01-.01	Authority	0400-60-01-.08	Application Process
0400-60-01-.02	Purpose	0400-60-01-.09	Decision and Order
0400-60-01-.03	Definitions	0400-60-01-.10	Geographical Area Release
0400-60-01-.04	State Set-Aside Volume	0400-60-01-.11	Confidentiality
0400-60-01-.05	Prime Supplier Representative	0400-60-01-.12	Misrepresentations
0400-60-01-.06	Price	0400-60-01-.13	Appeal
0400-60-01-.07	Priority for Assistance		

0400-60-01-.01 AUTHORITY.

Upon the declaration of an energy emergency by the Governor pursuant to the provisions of T.C.A. §§ 58-2-101 et seq., the Office of Energy Programs may be directed to administer a State Set-Aside Program for the emergency allocation of liquid fuels in accordance with the following rules.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.02 PURPOSE.

The State Set-Aside Program shall be utilized by the Office of Energy Programs to meet hardship and emergency requirements of the eligible wholesale purchaser-consumers and wholesale purchaser-resellers within the state from the set-aside volume as provided by these rules.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.03 DEFINITIONS.

- (1) "Agriculture production" means commercial farming, fishing, dairy, poultry and livestock production, and the services directly related to the planting, cultivation, harvesting, processing, and distribution of fiber, and food intended for human consumption and animal feed.
- (2) "Assignment" means an action taken by the Office of Energy Programs directing a prime supplier of petroleum products to transfer the designated products to an authorized purchaser, wholesale purchaser-consumer or wholesale purchaser-reseller.
- (3) "Base period" means the corresponding month's purchases from the previous calendar year.
- (4) "Commissioner" means the Commissioner of the Tennessee Department of Environment and Conservation.
- (5) "Current requirements" means the supply of an allocated product needed by a wholesale purchaser-consumer or wholesale purchaser-reseller to meet its present supply requirements for a particular use of that product.

(Rule 0400-60-01-.03, continued)

- (6) "Emergency services" means law enforcement, firefighting, and emergency medical services, and the Tennessee Emergency Management Agency.
- (7) "End-user" means any firm which is an ultimate consumer of a petroleum product, other than a wholesale purchaser-consumer.
- (8) "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources, including electricity, natural gas, or petroleum products. Excluded from this definition is electrical generation, whose power source is petroleum-based.
- (9) "Extreme emergency" means an energy situation in which the Office of Energy Programs finds that the public health, safety or welfare is in danger or would be seriously impacted by loss of supply.
- (10) "Firm" means any business association, company, corporation, estate, joint-venture, partnership, or sole proprietorship or any other legal entity, other than an individual, including, but not limited to, charitable and education institutions, and all federal, state and local governmental subdivisions.
- (11) "Middle distillate" means any derivatives of petroleum obtained in the range of kerosene to lubrication oil in the refining process, including kerosene, home heating oil, range oil, stove oil, and diesel fuel.
- (12) "Motor gasoline" means any of the various grades of motor gasoline (premium, regular, or unleaded, including gasoline/alcohol mixtures, such as gasohol) which are a volatile flammable liquid hydrocarbon mixture, such as a fuel especially for internal combustion engines.
- (13) "Passenger transportation services" means public and privately-owned facilities and vehicles, including water and rail, for carrying passengers.
- (14) "Petroleum products" means propane, gasoline, unleaded gasoline, gasohol, kerosene, #2 heating oil, diesel fuel, kerosene base jet fuel, aviation gasoline, Bunker C fuel oil, and #4, #5, and #6 residual oil for utility and non-utility uses.
- (15) "Prime supplier" means the supplier which makes the first sale of any petroleum products into the state distribution system for consumption within the state.
- (16) "Purchaser" means a wholesale purchaser, an end-user, or both.
- (17) "Retailer" means a firm that sells petroleum or petroleum products to the general public for direct consumption.
- (18) "Sanitation services" means the collection and disposal of solid wastes for the benefit of the general public, whether by public or private entities, and the maintenance, operation, and repair of liquid purification and waste facilities during emergency conditions; also the provision of water supply services by public utilities, whether privately or publicly owned or operated.
- (19) "Set-aside" means a set percentage of petroleum products to be allocated from a prime supplier by the Office of Energy Programs.
- (20) "Supplier" means any firm which presently supplies, sells, transfers or otherwise furnishes, as by consignment, any petroleum product to wholesale purchasers or end-users, including but not limited to, a refiner, importer, reseller, jobber or retailer.

(Rule 0400-60-01-.03, continued)

- (21) "Telecommunication services" means the operation, repair, and maintenance of voice, data, telegraph, video, and similar communications common carriers during periods of substantial disruption of normal service, excluding sales and administrative activities.
- (22) "Total supply" means the sum of petroleum products a prime supplier will make available for distribution to the state of Tennessee in a given month.
- (23) "Wholesale purchaser" means a wholesale purchaser-reseller or wholesale purchaser-consumer, or both.
- (24) "Wholesale purchaser-consumer" means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains a petroleum product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location.
- (25) "Wholesale purchaser-reseller" means a firm who purchases, receives through transfer or otherwise obtains such as by consignment petroleum products, and who resells or otherwise transfers its product to purchasers without substantially changing its form, excluding retailers.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.04 STATE SET-ASIDE VOLUME.

- (1) The Office of Energy Programs shall notify each prime supplier of the monthly set-aside percentage applicable to each product in the Set-Aside Program. The percentage remains constant until further notification.
- (2) A prime supplier shall inform the Office of Energy Programs on or before the 20th day of each month of the estimated volume of each petroleum product to be delivered into Tennessee for consumption within the state during the following month.
- (3) The set-aside volume available to the Office of Energy Programs for a particular month is calculated by multiplying the set-aside percentage by each prime supplier's total supply of each petroleum product for that month.
- (4) Upon a determination by the Office of Energy Programs that after serving all qualified applicants an excess amount of petroleum product remains in the state set-aside, a statewide release may be made to any or all suppliers.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.05 PRIME SUPPLIER REPRESENTATIVE.

Each prime supplier shall designate a Set-Aside Program representative to act for and on behalf of the prime supplier, and shall notify the Office of Energy Programs in writing of such designation.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.06 PRICE.

Suppliers shall charge prevailing prices for set-aside petroleum product and not place a premium or spot price on set-aside volumes.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.07 PRIORITY FOR ASSISTANCE.

Only a wholesale purchaser-consumer or a wholesale purchaser-reseller is eligible for an assignment from the state set-aside. Priority for set-aside shall go to wholesale purchaser-consumers and wholesale purchaser-resellers who are involved in the following activities:

- (1) Agricultural production;
- (2) Emergency services;
- (3) Energy production;
- (4) Passenger transportation services;
- (5) Sanitation services; and
- (6) Telecommunication services.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.08 APPLICATION PROCESS.

- (1) Applications must be filed with the Office of Energy Programs.
- (2) Applications received within three (3) working days of the first day of the month will be deemed to have been received on the first day of the month. All applications received earlier than three (3) working days prior to the first day of the month will be returned to the applicant.
- (3) Filing procedures:
 - (a) Each applicant must submit a written and signed "Certification of Petroleum Product Hardship" application to the Office of Energy Programs. Such application shall contain a sworn statement testifying to the truth and accuracy of all statements contained in the application.
 - (b) In extreme emergencies applications may be made orally and written information provided within five (5) days. Oral applications will be accepted beginning on the first day of the month and will be deemed to have been filed on the day they are received by the Office of Energy Programs. A written application must follow the oral application within five (5) days. No hardship application will be approved for an oral applicant until all prior oral applications by the same firm have been documented by acceptable written application.
 - (c) Each application will be for only one product type and will apply only to the current month during which the application is being made.

(Rule 0400-60-01-.08, continued)

- (d) The wholesale purchaser-consumer and wholesale purchaser-reseller submitting applications on behalf of end-users must, in addition to their own application, submit a "Certification of Petroleum Product Hardship" application for each entity for whom they are requesting five thousand (5,000) gallons or more of petroleum product.
- (e) Each wholesaler purchaser-consumer or wholesale purchaser-reseller application requesting less than five thousand (5,000) gallons of petroleum product must be accompanied by the following minimum information:
 - 1. Firm name, address and phone number;
 - 2. Contact person;
 - 3. Applicant category;
 - 4. Supplier, product brand and type, and delivery terminal;
 - 5. A listing of monthly purchases during the base period;
 - 6. Minimum fuel requirements during the month;
 - 7. Shortfall for month; and
 - 8. Reason for shortfall.
- (f) In making a determination on a request for a Set-Aside release, the Office of Energy Programs shall consider, but not be limited to, the following criteria:
 - 1. The nature and effect of the unusual or abnormal circumstances causing the supply shortfall.
 - 2. The type of customer for which the product is being requested.
 - 3. The total amount of product available in the state set-aside for the month in question.
 - 4. The punctuality and completeness with which the Certification for Petroleum Product Hardship application is submitted.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.09 DECISION AND ORDER.

- (1) The Office of Energy Programs shall make a decision granting or denying the application for an assignment in whole or part upon consideration of the application and any other relevant information received or obtained during the application process.
- (2) The Office of Energy Programs will make a decision on all applications within fifteen (15) days of filing, to the extent administratively feasible. If no order authorizing an assignment has been issued within said period, the application shall be deemed to have been denied in all respects.

(Rule 0400-60-01-.09, continued)

- (3) The Office of Energy Programs shall issue a written order authorizing the assignment and serve it on the prime supplier from whose set-aside the assigned product is to be drawn. An order is effective upon issuance and must be presented within ten (10) days unless stayed, modified, suspended, or rescinded. The order 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.
- (4) By means of a written notice the Office of Energy Programs may temporarily suspend the running of the fifteen (15) day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the Office of Energy Programs serves notice upon the firm that the additional information has been received. Unless otherwise provided in writing by the Office of Energy Programs, the fifteen (15) day period shall resume running on the first working day following the day on which the notice was served.
- (5) If the Office of Energy Programs determines that there is insufficient information upon which to base a decision and requested additional information is not submitted, the application will be denied.
- (6) At any time during the month the Office of Energy Programs may order the release of part or all of the prime supplier's set-aside volume through the prime supplier's normal distribution system in the state. The Office of Energy Programs shall serve a copy of such an order upon the prime supplier.
- (7) In all cases the Office of Energy Programs will attempt to work within existing supplier-purchaser relationships to the maximum extent possible.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.10 GEOGRAPHICAL AREA RELEASE.

- (1) The Office of Energy Programs may designate certain geographical areas within the state as suffering from a supply imbalance. At any time during the month the Office of Energy Programs may order a prime supplier to release all or part of the prime supplier's set-aside volume through the prime supplier's normal distribution systems to the designated areas. Such a release is intended to increase the volume of petroleum products available to the motoring public through the retailers located within the geographical area.
- (2) Any area is eligible to apply to the Office of Energy Programs for a geographical area release if circumstances of an unusual or abnormal nature have contributed to supply imbalance.
- (3) The chief executive officer of the county shall certify the geographical area shortage to the Office of Energy Programs through a written certification signed by the same and must contain the following minimum information:
 - (a) A statement detailing the abnormal or unusual circumstances and the actual or projected effect upon the people of the area.
 - (b) A definition of the size and boundaries of the geographical area, and the number of people in the area.
 - (c) A detailing of the fuel shortage demand/restraint and supply/management measures being practiced in the area.

(Rule 0400-60-01-.10, continued)

- (d) The number of retail stations, a list of the brands of gasoline, and the minimum amount of gasoline by brand estimates to be necessary to supply the area with gasoline through the last day of the month.
 - (e) A sworn statement containing an affirmation that all the information given is true and accurate; the relief will be used for the purpose described, and the nature of the gasoline conservation measures being practiced in the geographical area.
- (4) In extreme emergencies the certification process may be initiated orally and the written information provided within five (5) days. No further geographical area releases will be approved for an oral applicant until all prior oral applications by the same entity have been documented by acceptable written application.
- (5) If the request for geographical area release is approved, a confirming correspondence shall be sent to the county executive and to suppliers with retail outlets in the area. The correspondence will direct the release of specified amounts of petroleum products through the supplier's normal distribution system in that area.
- (6) In making a determination on a request for geographical area release, the Office of Energy Programs shall consider the following criteria:
 - (a) Number of retail stations in the area, and the quantity of fuel products available.
 - (b) Approximate number of persons residing in the area.
 - (c) The nature and effect of the unusual or abnormal circumstances causing the supply imbalance.
 - (d) The extent to which fuel shortage demand/restraint and supply/management measures are being practiced in the area.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.11 CONFIDENTIALITY.

T.C.A. § 4-3-514 provides that the Office of Energy Programs shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

trade secrets and commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the office under this chapter, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information.

The Office of Energy Programs will maintain any such records so deemed to be confidential in accordance with T.C.A. Title 10, Chapter 7, Part 5.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.12 MISREPRESENTATIONS.

The Office of Energy Programs may initiate an investigation of any material statement made in connection with any application. In the course of such an investigation the Office of Energy Programs

(Rule 0400-60-01-.12, continued)

may solicit and accept relevant information from any source, all of which shall be made a part of a permanent investigatory file. In the event the Office of Energy Programs finds cause to believe that a willful misrepresentation of a material fact has been made by applicant during the application process, it shall convene a contested case proceeding pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in T.C.A. Title 4, Chapter 5, to resolve the issue. Such proceedings shall be conducted by the Office of Energy Programs in accordance with the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Chapter 1360-04-01, Official Compilation of Rules and Regulations of the State of Tennessee. At the conclusion of such proceedings a copy of the administrative record shall be forwarded to the Office of the Attorney General and Reporter for appropriate action.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.

0400-60-01-.13 APPEAL.

Within ten (10) days after the granting or denial of an application, an applicant aggrieved thereby may file with the Office of Energy Programs a written petition of appeal which shall distinctly state the grounds upon which the review is sought. Each such petition of appeal shall state the name and address of the petitioner, a concise statement of the facts surrounding the case, the reasons for the appeal and the nature of the relief sought, and the names and addresses of firms known to the petitioner that may be affected by the outcome of the appeal. The petitioner shall attach to each such petition of appeal a sworn statement setting forth that the information contained therein is true and correct to the best of the petitioner's knowledge, information and belief. The Office of Energy Programs shall convene a contested case proceeding pursuant to the provisions of the Uniform Administrative Procedures Act, compiled in T.C.A. Title 4, Chapter 5, for each such petition of appeal filed in a timely manner. Such proceedings shall be conducted by the Office of Energy Programs in accordance with the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Chapter 1360-04-01, Official Compilation of Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§ 4-3-510 through 4-3-515, 4-5-201 et seq., 11-1-101, and Governor Haslam's Executive Order Number 25. **Administrative History:** Original rules filed January 17, 2017; effective April 17, 2017. Rule renumbered from 0500-03-01.