

**RULEMAKING HEARING RULES
OF THE
TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
ENERGY DIVISION**

**CHAPTER 0500-3-1
STATE SET-ASIDE PROGRAM**

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0500-3-1-.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 Energy Division may be directed to administer a State Set-Aside Program for the emergency allocation of liquid fuels in accordance with the following regulations.

Authority: T.C.A. §§58-2-101; Section 4-3-711. *Administrative History:* Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.02 PURPOSE. The State Set-Aside shall be utilized by the Energy Division 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 defined by these regulations.

Authority: T.C.A. §4-3-711. *Administrative History:* Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1.03 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 -- An action taken by the Energy Division directing a prime supplier of petroleum products to transfer the designated products to an authorized purchaser, wholesale purchaser-consumer or wholesale purchaser-reseller.
- (3) Assistant Commissioner -- The Assistant Commissioner of the Energy Division of the Department of Economic and Community Development.
- (4) Base period -- The corresponding month's purchases from the previous calendar year.
- (5) Commissioner -- The Commissioner of the Department of Economic and Community Development.
- (6) Current requirements -- 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.
- (7) Emergency services -- Law enforcement, fire fighting, and emergency medical services, and the Tennessee Emergency Management Agency.
- (8) End-user -- Any firm which is an ultimate consumer of a petroleum product, other than a wholesale purchaser-consumer.

(Rule 0500-3-1-.03, continued)

- (9) Energy production -- 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.
- (10) Extreme emergency -- An energy situation in which the Energy Division finds that the public health, safety or welfare is in danger or would be seriously impacted by loss of supply.
- (11) Firm -- 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.
- (12) Middle distillate -- 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.
- (13) Motor gasoline -- 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.
- (14) Passenger transportation services -- Public and privately-owned facilities and vehicles, including water and rail, for carrying passengers.
- (15) Petroleum products -- 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.
- (16) Prime supplier -- The supplier which makes the first sale of any petroleum products into the State distribution system for consumption within the State.
- (17) Purchaser -- A wholesale purchaser, an end-user, or both.
- (18) Retailer -- A firm that sells petroleum or petroleum products to the general public for direct consumption.
- (19) Sanitation services -- 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.
- (20) Set-Aside -- A set percentage of petroleum products to be allocated from a prime supplier by the Energy Division.
- (21) Supplier -- 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.
- (22) Telecommunication services -- 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.
- (23) Total supply -- The sum of petroleum products a prime supplier will make available for distribution to the State of Tennessee in a given month.
- (24) Wholesale purchaser -- A wholesale purchaser-reseller or wholesale purchaser-consumer, or both.

(Rule 0500-3-1-.03, continued)

- (25) Wholesale purchaser-consumer -- 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.
- (26) Wholesale purchaser-reseller -- 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. §4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.04 STATE SET-ASIDE VOLUME

- (1) The Energy Division 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 Energy Division 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 Energy Division for a particular month is calculated by multiplying the Set-aside percentage by each prime supplier's total supply, of each product for that month.
- (4) Upon a determination by the Energy Division that after serving all qualified applicants an excess amount of product remains in the state set-aside, a statewide release may be made to any or all suppliers.

Authority: T.C.A. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.05 PRIME SUPPLIER REPRESENTATIVE. Each prime supplier shall designate a Set-Aside Program representative to act for an on behalf of the prime supplier, and shall notify the Energy Division in writing of such designation.

Authority: T.C.A. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

05-3-1-.06 PRICE. Suppliers shall charge prevailing prices for Set-Aside product and not place a premium or spot price on set-aside volumes.

Authority: T.C.A. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.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

(Rule 0500-3-1-.07, continued)

- (2) Emergency services
- (3) Energy production
- (4) Passenger transportation services
- (5) Sanitation services
- (6) Telecommunication services

Authority: T.C.A. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.08 APPLICATION PROCESS

- (1) Applications must be filed with the Energy Division.
- (2) Applications received within **three 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 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 Energy Division. 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 Energy Division. 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.
 - (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 5,000 gallons or more of petroleum product.
 - (e) Each wholesaler purchaser-consumer or wholesale purchaser-reseller application requesting less than 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
 8. reason for shortfall

(Rule 0500-3-1-.08, continued)

- (f) In making a determination on a request for a Set-Aside release, the Energy Division 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. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-.09 DECISION AND ORDER

- (1) The Energy Division 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 Energy Division 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.
- (3) The Energy Division 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 Energy Division 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 Energy Division serves notice upon the firm that the additional information has been received. Unless otherwise provided in writing by the Energy Division, 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 Energy Division 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 Energy Division 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 Energy Division shall serve a copy of such an order upon the prime supplier.
- (7) In all cases the Energy Division will attempt to work within existing supplier-purchaser relationships to the maximum extent possible.

Authority: T.C.A. §4-3-71. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-10 GEOGRAPHICAL AREA RELEASE

- (1) The Energy Division may designate certain geographical areas within the State as suffering from a supply imbalance. At any time during the month the Energy Division may order a prime supplier to release all or part of their set-aside volume through their 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 Energy Division 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 Energy Division 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.
 - (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 Energy Division 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. § 4-3-711. **Administrative History:** Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-11 CONFIDENTIALITY. All information supplied to the Energy Division shall be treated in accordance with the provisions of T.C.A. Section 4-3-712(b).

Authority: T.C.A. § 4-3-711. *Administrative History:* Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-12 MISREPRESENTATIONS. The Energy Division may initiate an investigation of any material statement made in connection with any application. In the course of such an investigation the Energy Division 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 Energy Division 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 proceedings pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, T.C.A. §§4-5-301, et. seq., to resolve the issue. Such proceedings shall be conducted by the Energy Division in accordance with the Uniform Rules of Procedures for Hearing Contested Cases before State Administrative Agencies, Chapter 1360-1-7, 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. § 4-3-711. *Administrative History:* Original rule filed December 12, 1983; effective January 11, 1984.

0500-3-1-13 APPEAL. Within ten (10) days after the granting or denial of an application, an applicant aggrieved thereby may file with the Energy Division 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 Energy Division shall convene a contested case proceeding pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, T.C.A. §§4-5-301, et. seq., for each such petition of appeal filed in a timely manner. Such proceedings shall be conducted by the Energy Division in accordance with the Uniform Rules of Procedures for Hearing Contested Cases before State Administrative Agencies, Chapter 1360-1-7, Official Compilation of Rules and Regulations of the State of Tennessee.

Authority: T.C.A. § 4-3-711. *Administrative History:* Original rule filed December 12, 1983; effective January 11, 1984.