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Sequence Number: 11-10-15
 Notice ID(s): 2410-2417
 File Date: 11-20-15

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Office of Energy Programs
Contact Person:	Angela McGee
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243
Phone:	(615) 741-2994
Email:	angela.mcgee@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 22nd Floor Nashville, Tennessee 37243
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service at 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	2nd Floor Conference Room F		
Address 2:	William R. Snodgrass TN Tower 312 Rosa L. Parks Avenue		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	01/21/16		
Hearing Time:	11:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

On November 26, 2012, Governor Bill Haslam by Executive Order Number 25 transferred the Energy Division from the Department of Economic and Community Development to the Department of Environment and Conservation (TDEC). The purpose of this rulemaking is to renumber the rules related to the Office of Energy Programs from Rule Division 0500-03 to Rule Division 0400-60. In addition to renumbering, these rules have been updated as necessary to reflect its current status within TDEC.

The Department prepared an initial set of draft rules for public review and comment. The "Draft" rules may be accessed for review using <https://tn.gov/environment/section/energy>.

Draft copies are also available for review at the following address:

Tennessee Department of Environment and Conservation
Office of Energy Programs
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 741-2994

Office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Department of Environment and Conservation, Office of Energy Programs; Attention: Angela McGee, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243; telephone (615) 741-2994 or fax (615) 741-5070. However, such written comments must be received by 4:30 PM CST, January 21, 2016, in order to assure consideration. For further information, please contact Angela McGee at the above address or telephone number or by e-mail at angela.mcgee@tn.gov.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

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0400-60-01-.03	Definitions
0400-60-01-.04	State Set-Aside Volume
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0400-60-04-.03	Definitions
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(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Repeals

Chapter 0500-03-01 State Set-Aside Program

Chapter 0500-03-01 State Set-Aside Program is repealed

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-02 Public Records is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-04 Small Business Energy Loan Program is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0500-03-05 Local Government Energy Efficiency Loan Program is repealed.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

New Rules

Chapter 0400-60-01 State Set-Aside Program

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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 regulations.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-01-.02 Purpose.

The State Set-Aside 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 defined by these regulations.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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.
- (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.
- (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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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 product for that month.
- (4) Upon a determination by the Office of Energy Programs 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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-01-.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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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
- (6) Telecommunication services

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-01-.08 Application Process

- (1) Applications must be filed with the Office of Energy Programs.
- (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 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.
 - (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; 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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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.
- (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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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 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 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.
 - (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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-01-.11 Confidentiality

T.C.A. § 4-3-712(b) provides that the Office of Energy Programs (formally known as the "energy division" or the "division of energy") shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

"trade secrets and commercial or financial information which is used either directly or indirectly in the business of any person submitting information to the division under this program and which 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 the Public Records Act, T.C.A. §§ 10-7-501 et seq.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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 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 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 Office of Energy Programs in accordance with the Uniform Rules of Procedures for Hearing Contested Cases before State Administrative Agencies, Chapter 1360-01-07, 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. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

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 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 Office of Energy Programs in accordance with the Uniform Rules of Procedures for Hearing Contested Cases before State Administrative Agencies, Chapter 1360-01-07, Official Compilation of Rules and Regulations of the State of Tennessee.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0400-60-02
Public Records

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0400-60-02-.01 Confidentiality of All Proprietary Information

T.C.A. § 4-3-712(b) provides that the Office of Energy Programs (formally known as the "energy division" or the "division of energy") shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

"trade secrets and commercial or financial information which is used either directly or indirectly in the business of any person submitting information to the division under this program and which 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 the Public Records Act, T.C.A. §§ 10-7-501 et seq.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-02-.02 Copies of Public Records

Copies of public records will be made available upon request in accordance with Rule 0400-01-01-.01.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0400-60-04
Small Business Energy Loan Program

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0400-60-04-.12 Completion Certificate Required
0400-60-04-.13 Confidentiality of Information Submitted

0400-60-04-.01 Authority

Pursuant to the provisions of T.C.A. § 11-1-101(e), the Commissioner of the Tennessee Department of Environment and Conservation may promulgate rules and regulations necessary to carry out such Commissioner's duties and responsibilities.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.02 Purpose and Scope

- (1) The purpose of this program is to provide low interest loans to small businesses, units of county and local governments and other eligible organizations throughout the State of Tennessee to facilitate in the identification, installation, and incorporation of energy efficiency measures onto, or into, existing facilities, processes, and/or operations located in the State of Tennessee.
- (2) This chapter sets forth the rules for the submission, acceptance, review, and approval of applications for financial assistance under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.03 Definitions

The following definitions shall apply to these rules:

- (1) "Applicant" means any individual, domestic Tennessee company or unit of county or local government applying for assistance under this program.
- (2) "Approved Applicant" means any applicant who has submitted an application for financial assistance and has been approved according to the approval criteria published by the Office of Energy Programs of the Tennessee Department of Environment and Conservation.
- (3) "Eligible Applicant" means any applicant that has met the applicant eligibility criteria published by the Office of Energy Programs of the Tennessee Department of Environment and Conservation.
- (4) "Eligible Structure" means any structure that has met the structural eligibility criteria published by the Office of Energy Programs of the Tennessee Department of Environment and Conservation.
- (5) "Energy Efficiency Measure" means the installation of a new energy system or a modification to an existing energy system, plant process, operation, or structure which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.

- (6) "Office of Energy Programs" means the Office of Energy Programs of the Tennessee Department of Environment and Conservation.
- (7) "Residential End Use" means any structure that is used for personal residential occupancy.
- (8) "Targeted Structure" means the structure onto which the identified energy efficiency measures will be affixed or which houses the applicant's existing plant processes, operations, or energy systems which will undergo an energy efficiency modification with proceeds of a loan under this program.
- (9) "TDEC" means the Tennessee Department of Environment and Conservation.
- (10) "TVA" means the Tennessee Valley Authority.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.04 Maximum Loan Amount

The maximum loan amount available per applicant under this program shall be Three Hundred Thousand Dollars (\$300,000.00).

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.05 Repayment Period

All loans approved and accepted under this program shall be paid back monthly within seven (7) years from the date that begins sixty (60) days after the date of loan closing.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.06 Early Payoff of Loan

There shall be no penalty assessed to the borrower for the early payoff of a loan under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.07 Eligibility

In order to be approved for financial assistance under this program, both the applicant and the targeted structure must be deemed eligible according to criteria published by the Office of Energy Programs.

- (1) Applicants for financial assistance must meet all of the following four criteria:
 - (a) Be classified as either a small business of less than 300 employees or less than \$3.5 million in annual gross sales or receipts or a unit of county or local government utilizing the loan to improve the energy efficiency of an existing building that the applicant owns, occupies or uses for a business, industrial or commercial purpose.
 - (b) Own, occupy or use the targeted structure in its operations; and,
 - (c) Be declared financially sound and capable of repaying the monies borrowed according to criteria published by the Office of Energy Programs.
- (2) A structure that is to be the target for the installation of energy efficiency measures that will be financed with the proceeds of a loan under this program shall be considered an eligible structure only if it is an existing structure, at least one (1) year old, that is located within the territorial boundaries of the State of Tennessee and, is not:

- (a) Classified as condemned or scheduled for demolition; or,
- (b) Leased or rented by the applicant from another party unless the landlord has given the tenant written permission to proceed with the installation; or,
- (c) Encumbered by a real estate sale, purchase, option, or trade agreement that is scheduled to take place prior to the maturity of the loan unless either:
 1. The current occupant/debtor agrees to retire the outstanding balance of the loan before closing the agreement; or,
 2. The new occupant agrees to retire the outstanding indebtedness according to the terms and conditions of the originally executed loan agreement; or,
- (d) Included on the National Register of Historic Landmarks and Sites maintained by the U.S. Secretary of the Interior or, if included, has the approval, in writing, of the Historical Society to perform the work; or,
- (e) Located in a wetland or special flood hazard area as designated by the Federal emergency Management Agency; or,
- (f) Encumbered by subordinate mortgages, mechanics', or materialmen's, and/or any other types of liens which would prevent the Office of Energy Programs from obtaining a security interest which is junior to no more than one security interest as collateral for a loan under the program or in an amount that would cloud the Office of Energy Programs' collateral or jeopardize the Programs' ability to collect on the unpaid balance of a loan in the event of a default.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.08 Energy Audit Required

An Energy Audit, conducted by either an architect or engineer licensed to do business in the State of Tennessee, the Tennessee Valley Authority or other energy utility or an architect or engineer on the faculty or staff of a Tennessee college or university and in a format published by the Office of Energy Programs shall be a prerequisite for application review under this program.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.09 Eligible Measures

Loans shall be made available only for the purchase and installation of one or more energy efficiency, renewable energy and/or clean energy technology measures on projects that have been identified as having either a simple economic payback of ten (10) years or less or a positive net present value.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.10 Retroactive Assistance Prohibited

The proceeds of all loans received under this program shall be used solely for the purpose of installing new energy efficiency measures and shall not be used to finance energy efficiency projects that were either completed, or in progress, prior to the date of the application for assistance.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.11 Application Package Required

In order to be considered for financial assistance under this program, an applicant must submit an approved Application Package to the Office of Energy Programs.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.12 Completion Certificate Required

Loan proceeds shall not be disbursed unless the Office of Energy Programs has received a fully executed Work Completion Certificate signed by an authorized agent for the Office of Energy Programs.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-04-.13 Confidentiality of Information Submitted

- (1) T.C.A. § 4-3-712(b) provides that the Office of Energy Programs (formally known as the "energy division" or the "division of energy") shall maintain the confidentiality of all proprietary information it may acquire. Proprietary information is defined as:

"trade secrets and commercial or financial information which is used either directly or indirectly in the business of any person submitting information to the division under this program and which 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 the Public Records Act, T.C.A. §§ 10-7-501 et seq.

- (2) Copies of Public Records

Copies of public records will be made available upon request in accordance with Rule 0400-01-01-.01.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

Chapter 0400-60-05
Local Government Energy Efficiency Program

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0400-60-05-.01 Authority

Pursuant to the provisions of T.C.A. § 11-1-101, the Commissioner of the Tennessee Department of Environment and Conservation may promulgate rules and regulations necessary for the operation of any programs or any of the divisions of the department.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.02 Purpose and Scope

The Local Government Energy Efficiency Loan Program provides low interest loans to Tennessee county, metropolitan and municipal governments for energy efficiency measures that improve facility energy efficiency and reduce energy costs.

This chapter sets forth the rules for program application and participation.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.03 Definitions

The following definitions shall apply to these rules.

- (1) "Applicant" means any county, metropolitan or municipal government that submits an application to TDEC for program loan funds.
- (2) "Distressed County" means any county listed by TDEC as being economically distressed in accordance with criteria established by TDEC for county per capita income and average unemployment rate.
- (3) "Energy Efficiency Measure" means any structural modification or equipment change out that reduces energy costs in a facility,
- (4) "Local Government" means any Tennessee county, metropolitan or municipal government.
- (5) "Net Present Value" means the dollar figure that is obtained by totaling the annual energy savings, which has been discounted at a rate equal to the loan interest rate as established by TDEC, and subtracting the total cost of the energy efficiency measure.
- (6) "Program" means the Local Government Energy Efficiency Loan Program.

(7) "TDEC" means the Tennessee Department of Environment and Conservation.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.04 Eligible Projects

TDEC may loan funds to a local government for the purpose of financing energy efficiency measures for a building or structure owned and used by the local government. Such buildings or structures must have been used or operated for one year prior to the date of application for an energy efficiency loan. TDEC will only loan funds for energy efficiency measures which have a positive net present value.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.05 Maximum Loan Amount

TDEC may make energy efficiency loans in the amounts not exceeding five hundred thousand dollars (\$500,000.00). Local governments may receive several energy efficiency loans under this loan program, but the cumulative outstanding balance of such loans under this loan program may not exceed five hundred thousand dollars (\$500,000.00).

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.06 Eligible Costs

Energy efficiency loan funds can be used for the identification, design, purchase and installation of energy efficiency measures.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.07 Loan Term and Interest Rate

The maximum loan term is seven (7) years. A participating local government may prepay the loan at any time without penalty. TDEC will announce the loan interest rate for local governments in distressed counties and the loan interest rate for local governments in non-distressed counties in an annual program directive memorandum.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.08 Retroactive Projects

TDEC will not approve applications where the energy efficiency measures have been purchased, or partially or completely installed prior to formal TDEC approval.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.09 Reserved

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.10 Loan Application

Applicants must submit a complete application to TDEC in order to qualify for consideration for loan funds. A complete application consists of a completed and signed application form for each facility which will be the subject of energy efficiency measures, a technical energy audit for each facility, and a certified copy of a resolution from

the local governing body authorizing participation in the program. Application forms for K-12 schools and offices must be signed by the school superintendent. All other applications must be signed by the county executive, mayor, city manager or city administrator. The technical energy audit must be less than two (2) years old and must be conducted by either an architect or an engineer licensed to practice in the State of Tennessee, by the Tennessee Valley Authority or other energy utility, or by an architect or an engineer on the faculty or staff of a Tennessee college or university.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.11 Application Review

TDEC will review an application for completeness and accuracy. TDEC will review all projects for technical accuracy and soundness and net present value. Projects must have a positive new present value in order to be approved for funding.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.12 Reserved

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.13 Project Implementation

Approved applicants must implement their project by submitting an authorized capital outlay note to TDEC within six months of application approval, completing the project within one (1) year of application approval, and submitting a work completion form and copies of invoices showing actual project cost to TDEC within two (2) months of completion of the project. Failure to meet this implementation timetable can result in withdrawal of approval or disqualification for future loans.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

0400-60-05-.14 Loan Repayment

Loan recipients must amortize debt within the agreed upon term, not to exceed seven (7) years. The recipient will make one (1) payment per year in accordance with a repayment schedule provided by TDEC. The first payment date will be one (1) year from the date of the capital outlay note.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25..

0400-60-05-.15 Reporting Requirements

Loan recipients will provide, or arrange for its energy distributors to provide, copies of monthly utility bills to TDEC during the term of the loan.

Authority: T.C.A. §§ 11-1-101, 4-3-708 through 4-3-713, 4-5-201 et seq. and Governor Haslam's Executive Order Number 25.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: November 20, 2015

Signature: _____

Name of Officer: Molly Cripps

Title of Officer: Director Energy Programs

Subscribed and sworn to before me on: _____

November 20, 2015

Notary Public Signature: _____

Carol L. Grice

My commission expires on: _____

June 21, 2016

Department of State Use Only

Filed with the Department of State on: _____

11-20-15

Tre Hargett

Tre Hargett
Secretary of State

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