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Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date (effective date): \_\_\_\_\_  
End Effective Date: \_\_\_\_\_

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Agriculture
<b>Division:</b>	Consumer & Industry Services
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**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendment

New

Repeal

**Statement of Necessity:**

This rule is promulgated to limit use of dicamba pesticide products in production of food or fiber in commerce. Dicamba (3, 6-dichloro-2-methoxybenzoic acid) is an active ingredient in certain broad-spectrum herbicides such as Banvel, Diablo, Oracle, and Vanquish, used to prevent or destroy broadleaf weeds and woody plants in both agricultural uses and other areas. For agricultural use prior to 2017, dicamba products were labeled only for pre-emergent application in burndown of fields to be planted later in the season; however, subsequent formulations and/or labels of some dicamba products have been federally approved for application over emergent crops. In 2016 Tennessee, Missouri, Arkansas, and numerous other states experienced exponential growth in pesticide complaints related to dicamba products, their use, and potential drift. In Tennessee, the vast majority of those complaints pertained to dicamba used in production of food or fiber. At last estimate, approximately 40,000 acres of crops in Tennessee in 2016—including soybean, cotton, and other products—were either destroyed or negatively affected by alleged dicamba misuse. In preparation of the 2017 growing season, the department increased outreach and educational efforts with producers in hopes that changes to technology and product labeling would forestall repeated crop destruction. However, elevated numbers of dicamba-related complaints have persisted in 2017, and the department anticipates that various crop producers in Tennessee have planned for, acquired resources for, and intend to continue dicamba applications in the 2017 growing season.

In complaints where dicamba is established as the likely cause of damage, the department finds that various factors may contribute to the dicamba's drift—e.g. use of older formulations that have greater propensity for drift; use of any dicamba product without proper equipment; applications in cooler parts of the day more subject to temperature inversion; and off-label application of products over emergent crops. While the department is still compiling data and a clearer understanding of specific problems related to dicamba use, it is clear that action must be taken in attempt to avoid future loss and to limit the variables at issue in order to speed the understanding of specific problems in dicamba applications. In light of the foregoing, the department finds that particular formulations of dicamba products and their application for agricultural purposes pose an immediate danger to the public welfare, and the nature of this danger is such that use of any other form of rulemaking authorized under the Tennessee Uniform Administrative Procedures Act would not adequately protect the public.

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)**

<b>Chapter Number</b>	<b>Chapter Title</b>
0080-09-06	Emergency Rules
<b>Rule Number</b>	<b>Rule Title</b>
0080-09-06-.01	Dicamba

New

Chapter 0080-09-06  
Emergency Rules

0080-09-06-.01 Dicamba.

- (1) Scope. This rule applies to any person who applies or causes the application of dicamba for agricultural purposes. This rule shall continue in effect from its date of filing until October 1, 2017.
- (2) Definitions.
  - (a) Terms in this rule share those meanings of terms set forth in the Tennessee Insecticide, Fungicide, and Rodenticide Act, compiled in title 43, chapter 8, parts 1 and 2 of the Tennessee Code, and the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21 of the Tennessee Code.
  - (b) When used in this chapter, unless the context requires otherwise:
    1. Act means the Tennessee Insecticide, Fungicide, and Rodenticide Act and the Tennessee Application of Pesticides Act of 1978, collectively or individually;
    2. Dicamba means 3, 6-Dichloro-2-methoxybenzoic acid; 3-6-Dichloro-o-anisic acid; or any pesticide containing dicamba in any concentration;
    3. For agricultural purposes means for the aid of producing food or fiber in commerce.
- (3) Application.
  - (a) No person shall apply dicamba for agricultural purposes unless certified as a private applicator or licensed as a pest control operator in the category of Agricultural Pest Control (C01).
  - (b) No person shall apply for agricultural purposes any product containing dicamba formulated prior to 2017 unless such product is approved for use by the department prior to application. A list of formulated products approved for use, despite being covered by this subparagraph, is published at: <https://agriculture.tn.gov/listproducts.asp>.
  - (c) No person shall apply dicamba for agricultural purposes other than between the hours of 9:00 a.m. and 4:00 p.m.
  - (d) When used for agricultural purposes related to the production of cotton, no person shall apply dicamba following first bloom of the cotton crop. For purposes of this rule, first bloom occurs approximately 60 to 80 days following planting and shall be interpreted as commonly understood by industry practice.
- (4) Records. Any person who applies or causes the application of dicamba for agricultural purposes shall keep records related to the application as otherwise required under 0080-09-02-.07 and 0080-09-04-.09.
- (5) Violations.

- (a) Each per acre application of dicamba in violation of the Act or this rule shall constitute a separate violation of this rule.
- (b) A person is responsible for violations of the Act or this rule when committed by either the person or his agent.
- (c) Each violation of the Act or this rule is grounds for denial or revocation of any certificate, license, or charter issued under the Act; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203, 4-5-208, and 62-21-118.

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.



Date: July 10, 2017

Signature: Jai Tompkins

Name of Officer: Jai Tompkins

Title of Officer: Commissioner

Subscribed and sworn to before me on: 07-10-17

Notary Public Signature: Theresa H. Denton

My commission expires on: 07-08-19

Agency/Board/Commission: \_\_\_\_\_

Rule Chapter Number(s): \_\_\_\_\_

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III  
Herbert H. Slatery III  
Attorney General and Reporter  
7/11/2017  
Date

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\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

\_\_\_\_\_  
Tre Hargett  
Secretary of State