

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 04-23-18
Rule ID(s): U740
File Date: 4/24/18
Effective Date: 7/23/18

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Department of Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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)

Chapter Number	Chapter Title
0080-09-02	Restricted Use Pesticides
Rule Number	Rule Title
0080-09-02-.13	Dicamba

Chapter 0080-09-02
Restricted Use Pesticides

0080-09-02-.13 Dicamba.

- (1) Scope. This rule applies to any person who makes or causes a row crop application of dicamba. Provisions of this rule are made in addition to all other definitions and requirements for the sale and application of pesticides under the Act, its corresponding regulations, and associated product labels.
- (2) Definitions. When used in this rule, unless the context requires otherwise:
 - (a) Dicamba means 3, 6-Dichloro-2-methoxybenzoic acid; 3-6-Dichloro-o-anisic acid; or any pesticide containing either substance in a concentration greater than or equal to 6.5%; and,
 - (b) Row crop application means for production of cotton or soybeans in commerce.
- (3) Application.
 - (a) A person shall not make a row crop application of dicamba before 7:30 a.m. or after 5:30 p.m. local time for the application site.
 - (b) Between May 15 and October 1, a person shall not make a row crop application of dicamba unless the dicamba product is labeled for in-crop use.
- (4) Records. Any person who makes or causes a row crop application of dicamba shall keep records of the application as required under 0080-09-02-.07.
- (5) Violations.
 - (a) Each acre where dicamba is applied in violation of the Act, its corresponding regulations, or this rule shall constitute a separate violation.
 - (b) A person is responsible for violations when committed by either the person or his agent.
 - (c) Each violation is grounds for denial or revocation of any certificate, license, or charter issued under the Act; actions for injunction; assessment of civil penalties up to \$1500 per violation; and imposition of criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203, 4-3-204, and 62-21-118.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 03/27/18 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/26/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/20/18

Date: March 27, 2018

Signature: [Handwritten Signature]

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 27, 2018

Notary Public Signature: Joyce M. Jackson

My commission expires on: 07/05/2021



Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All rulemaking hearing 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

4/20/2018
Date

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Filed with the Department of State on: 4/24/18

Effective on: 7/23/18

[Handwritten Signature]

Tre Hargett
Secretary of State

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Public Hearing Comments

The Department of Agriculture held a public hearing on March 20, 2018. Jay Miller served as hearing officer for the Rulemaking Hearing concerning 0080-09-02 Restricted Use Pesticides. No questions or comments from the public were presented at the hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (1) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Pesticide applicators who serve commercial producers of cotton and soybeans are subject to the proposed rule.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 5,500 private applicators and 250 commercial applicators of pesticides are expected to be subject to the proposed rule.
- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed rule change is not expected to increase administrative costs of affected firms.
- (4) Statement of the probable effect on impacted small businesses and consumers:

This rule implements time of day and year restrictions for application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans. It is anticipated that affected firms will require greater planning and diligence during portions of the day and year to apply the same quantities of product as applied for previous harvests. However, the department expects those limits are reasonable and will minimally impact those firms' production, if at all.
- (5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent such alternative means might be less burdensome to small business:

No less burdensome methods for achieving this purpose are possible.
- (6) Comparison of the proposed rule with any federal or state counterparts:

This rule operates in conjunction with label requirements of the dicamba pesticide products at issue. In 2017, labels of most of those products were amended and/or additional federal 24-C label applications were submitted or completed. The additional label requirements include: classifying the products as restricted use pesticides; requiring dicamba-specific training prior to use; maintaining additional application records; limiting applications based on wind speed; restricting applications by time of day; heightening tank clean-out requirements; and monitoring sensitive crop registries prior to use.
- (7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risks associated with use of dicamba pesticide products.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

No impact is expected on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule places time of day and year restrictions on application of certain dicamba pesticide concentrations in commercial production of cotton and soybeans.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Dicamba products are registered and labeled in accordance with the federal Insecticide, Fungicide, and Rodenticide Act. Pursuant to T.C.A. §62-21-116, dicamba may be applied consistent with its labeling. This rule places additional time of application restrictions in addition to product labeling.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Cotton and soybean producers in Tennessee are affected by this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

Terminix International Company, L.P. v. Tennessee Department of Labor, 77 S.W.3d 185 (Tenn. Ct. App. 2001) (State jurisdiction to regulate sale or use of pesticides is not preempted by federal authority).

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The estimated effect on departmental revenues and expenditures resulting from this rule is minimal.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5152; keith.harrison@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.



TENNESSEE DEPARTMENT OF AGRICULTURE

DIVISION OF CONSUMER & INDUSTRY SERVICES

JAI TEMPLETON
COMMISSIONER

HAND DELIVERY

March 26, 2018

Department of State
Division of Publications
8th Floor Snodgrass/TN Tower
312 Rosa L. Parks
Nashville, Tennessee 37243

RE: Rulemaking Hearing March 20, 2018

I served as hearing officer for a Rulemaking Hearing on March 20, 2018, concerning 0080-09-02 Restricted Use Pesticides. The public presented no questions or comments during the hearing.

Sincerely,

Jason B. Miller, Esq. /s/
Tennessee Department of Agriculture
Division of Consumer & Industry Services

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