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For Department of State Use Only

Sequence Number: 03-06-09
 Rule ID(s): 4142
 File Date: 03/17/2009
 Effective Date: 07/29/2009

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly

Agency/Board/Commission: Department of Agriculture
Division: Division of Regulatory Services
Contact Person: Keith Hodges
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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0080-06-14	Pest Control Operators
Rule Number	Rule Title
0080-06-14-.16	Requirements for Spot Treatment Only – Lawn Maintenance

Chapter 0080-06-14
 Pest Control Operators

New Rules

Table of Contents

0080-06-14-.16 Requirements for Spot Treatment Only – Lawn Maintenance

0080-06-14-.16 Requirements for Spot Treatment Only – Lawn Maintenance

- (1) Any person incidentally applying a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with commercial lawn and landscape maintenance practices such as spot treatments adjacent to fencing, driveways, parking lots, cemetery markers and landscape borders and areas in lieu of or in conjunction with hand-weeding or mechanical weed trimming and edging shall not be considered as applying a pesticide for a fee and shall not be required to be licensed as a commercial pest control operator when the person meets the following criteria:

- (a) The applicator has obtained certification by successfully completing (score of 70) an exam demonstrating general knowledge of pesticides including safety in handling, mixing and applying pesticides, environmental hazards in using pesticide, calculations, calibrations and label comprehension. The certification category created specifically for such application is to be known as "Limited Herbicide Applicator". Recertification requirements are stipulated in rule 0080-06-16.04. Any person exhibiting unethical behavior during an examination shall be ineligible to take another certification exam for two (2) years.
 - (b) The application equipment is limited to a single, hand-held nozzle supplied by a tank with a maximum capacity of twenty-five (25) gallons; an electric or hand-powered pump with a maximum discharge rate of 1.5 gallons per minute; and a discharge hose no more than fifteen (15) feet long.
 - (c) The applicator or his or her employer has furnished proof of liability insurance with coverage for bodily injury and property damage of at least \$300,000 per occurrence and \$300,000 aggregate, including coverage for products/completed operations, and the policy has been endorsed to cover herbicide applications.
 - (d) The certificate number issued to the applicator is displayed in the upper right-hand corner of the applicator's vehicle used in the business or on both sides of any trailer used in the business. The name of the business shall be displayed on the right and left sides of all company vehicles or trailers. Lettering shall not be less than two inches (2") tall.
 - (e) Application records shall contain the date of application and the property address.
- (2) A person operating under this section is not authorized to:
 - (a) Advertise the application of herbicides or any other pesticide application.
 - (b) Supervise the application of any pesticide by an uncertified person.
 - (3) Persons certified as limited herbicide applicators are not required to obtain a business charter, bond, or license.
 - (4) A person is not required to meet the above requirements in order to apply a herbicide with the sole active ingredient of Glyphosate for the control of weeds in conjunction with lawn maintenance practices as spot treatments in lieu of, or in conjunction with, mechanical weed trimming or edging at a homeowner's or renter's residence when such product is stored, provided and mixed by the homeowner or renter requesting such service. The homeowner or renter is responsible for instructing the applicator as to how and where to apply the product.

Authority: T.C.A. § 62-21-118(a)(5)

* 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 proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on 02/12/2009, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: February 12, 2009

Signature: Ken Givens

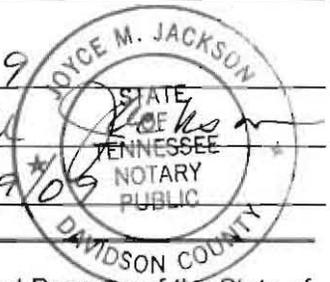
Name of Officer: Ken Givens

Title of Officer: Commissioner, TN Department of Agriculture

Subscribed and sworn to before me on: 02/12/2009

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/19/10



All proposed 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.

Robert E. Cooper, Jr.
 Attorney General and Reporter
3-11-09
 Date

Department of State Use Only

Filed with the Department of State on: 3/17/09

Effective on: 7/29/09

Tre Hargett
 Tre Hargett
 Secretary of State

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Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (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:

The small businesses subject to the proposed rules would be commercial lawn and landscape maintenance businesses.

- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

About seventy-six (76) small businesses will be subject to the proposed rules.

- (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:

There are no reporting, recordkeeping and other administrative costs required for compliance with the proposed rules.

- (4) Statement of the probable effect on impacted small businesses and consumers:

Persons wishing to become certified as limited herbicide applicators will have to pay a certification fee and obtain liability insurance as required. Although these costs may be passed on to the consumer, they will be minimal compared to the costs of having to obtain a pesticide charter and comply with the requirements of Tenn. Code Ann. §§ 62-21-101 et seq. and the rules currently promulgated thereunder.

- (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:

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rules. The point of the proposed rules is to remove a burden for small businesses.

- (6) Comparison of the proposed rule with any federal or state counterparts:

Arizona has a statute that is similar, but it is much broader in scope and application.

- (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.

If small businesses were exempted from the proposed rules, they would have to comply with the requirements of Tenn. Code Ann. §§ 62-21-101 et seq. and the rules currently promulgated thereunder, which would be very costly for them.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

The proposed rules would allow lawn maintenance businesses to make incidental spot treatments of Glyphosate-based herbicides without having to comply with the applicable requirements of Tenn. Code Ann. §§ 62-21-101 et seq. and the rules currently promulgated thereunder.

- []
- (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;

There are no such laws or regulations.

- []
- (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;

Commercial lawn and landscape maintenance businesses would be most directly affected by these proposed rules. They have urged that they be adopted.

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

There are no such opinions or rulings.

- []
- (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 change in state revenues will be negligible. This is based on the assumption that the costs to the State to implement the rules will be minimal.

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

Kathy Booker, Administrator, Pesticides Section or Mary Borthick, Certification & Licensing Supervisor

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

Kathy Booker, Administrator, Pesticides Section or Mary Borthick, Certification & Licensing Supervisor

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

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