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Sequence Number: 03-12-16
 Rule ID(s): 6138-6144
 File Date: 3/23/16
 Effective Date: 6/21/16

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

Chapter Number	Chapter Title
0080-05-01	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-05-08	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-05-09	Repealed
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-08-01	Commodity Sales and Fees
Rule Number	Rule Title
0080-08-01-.01	Method of Sale of Commodities
0080-08-01-.02	Weights and Measures Equipment Fees
0080-08-01-.03	Metrology Fees

Chapter Number	Chapter Title
0080-08-02	Certified Public Weigher Regulations
Rule Number	Rule Title
0080-08-02-.01	License Application and Fees
0080-08-02-.02	Record of Shipment

Chapter Number	Chapter Title
0080-08-03	Public Weighmaster Regulations
Rule Number	Rule Title
0080-08-03-.01	License Application and Fees
0080-08-03-.02	Notice of Enforcement Action Against Licensee

Chapter Number	Chapter Title
0080-08-04	Serviceperson Regulations
Rule Number	Rule Title
0080-08-04-.01	Registration Application and Fees
0080-08-04-.02	Notice of Enforcement Action Against Registrant

New

Division 0080-08 Weights and Measures is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-08-01
Commodity Sales and Fees

0080-08-01-.01 Method of Sale of Commodities

The department adopts by reference, as if fully stated herein, the standards titled "Uniform Regulation for the Method of the Sale of Commodities" as published in the National Institute of Standards and Technology (NIST) Handbook 130 issued by the U.S. Department of Commerce, as it may be amended from time to time, provided that its Sections 2.19 Kerosene and 2.20 Gasoline-Oxygenate Blends are not adopted and shall not apply to methods of sale regulated by the department.

Authority: T.C.A. §§ 4-3-203; 47-26-909.

0080-08-01-.02 Weights and Measures Equipment Fees

Annual fee requirements for commercial weighing and measuring equipment in the state are assessed according to T.C.A. §43-1-703(f), and are as follows:

(1) Liquid measuring equipment.

(a) Regular Flow. Regular flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A regular flow device is rated by its manufacturer as capable of measuring volumes

dispensed at a rate less than 20 gallons per minute, or the metric equivalent. The fee for regular flow liquid measuring devices is based on the number of grade selection buttons at the facility, as follows:

1. 1 – 6 grade selection buttons: Tier 1 fee;
 2. 7 – 12 grade selection buttons: Tier 2 fee;
 3. 13 – 18 grade selection buttons: Tier 3 fee;
 4. 19 – 24 grade selection buttons: Tier 4 fee;
 5. 25 – 30 grade selection buttons: Tier 5 fee;
 6. 31 – 36 grade selection buttons: Tier 6 fee;
 7. 37 – 54 grade selection buttons: Tier 7 fee;
 8. 55 – 78 grade selection buttons: Tier 9 fee;
 9. More than 78 grade selection buttons: Tier 10 fee.
- (b) High Flow. High flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A high flow device is rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than or equal to 20 gallons per minute, or the metric equivalent.
1. 1 – 6 dispensers: Tier 3 fee;
 2. More than 6 dispensers: Tier 6 fee.
- (c) Liquefied Products. Liquefied products refer to liquid measuring equipment kept or used for measuring the following liquids sold at retail.
1. Liquefied Petroleum Gas Measuring Equipment: Tier 3 fee per meter;
 2. Liquefied Natural Gas Measuring Equipment: Tier 6 fee per meter.
- (d) Bulk Meters. The following fees apply to liquid measuring equipment kept or used for measuring liquids sold in non-retail transactions and liquid measuring meters mounted on vehicles.
1. Liquefied Petroleum Gas Bulk Meter: Tier 3 fee per meter;
 2. Mass Flow Meter: Tier 11 fee per meter;
 3. Vehicle Tank Meter: Tier 3 fee per meter;
 4. Liquid Measuring Equipment – Wholesale, \leq 100 gallons/minute: Tier 3 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate less than or equal to 100 gallons per minute, or the metric equivalent;
 5. Liquid Measuring Equipment – Wholesale, $>$ 100 gallons/minute: Tier 4 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than 100 gallons per minute, or the metric equivalent.
- (2) Gaseous material measuring equipment. The following fees apply to devices kept or used for measuring gaseous materials sold in retail or non-retail transactions.

Compressed Natural Gas Measuring Equipment: Tier 6 fee per meter.

- (3) Scales. The following fees are payable based on the number of scales used or kept in commerce.
- (a) Small Scales. Small scales mean weighing equipment rated by its manufacturer as capable of weighing up to 2,500 pounds, or the metric equivalent.
1. 1 – 5 small scales: Tier 1 fee;
 2. 6 – 20 small scales: Tier 4 fee;
 3. More than 20 small scales: Tier 6 fee.
- (b) Large Scales. Large scales mean weighing equipment rated by its manufacturer as capable of weighing 2,500 pounds or more, or the metric equivalent.
1. 1 – 2 large scales: Tier 4 fee;
 2. More than 2 large scales: Tier 6 fee.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-909.

0080-08-01-.03 Metrology Fees [RESERVED]

Chapter 0080-08-02 Certified Public Weigher Regulations

0080-08-02-.01 License Application and Fees

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
- (a) Name of the applicant;
- (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a certified public weigher license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) An applicant for licensure under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.
- (5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-805; 47-26-806.

0080-08-02-.02 Record of Shipment

- (1) A certified public weigher shall prepare a record of shipment for any natural resource product sold by a producer or supplier. The certified public weigher shall prepare the record of shipment in writing prior to shipment of the natural resource product to its purchaser. The record of shipment shall contain the following information:
 - (a) Signature of the certified public weigher;
 - (b) Seal of the certified public weigher;
 - (c) Name of the supplier or producer;
 - (d) Name of the purchaser;
 - (e) Date of the transaction;
 - (f) Gross vehicular weight;
 - (g) License number(s) for the truck(s) on which the product is shipped; and
 - (h) The number of axles on each respective truck.
- (2) For each facility where a certified public weigher operates a scale or weight recording equipment, the certified public weigher shall maintain:
 - (a) A file listing of all trucks weighed at the facility within the previous 12 months. For each truck included in the listing, the certified public weigher shall record the license number and the number of axles on the truck; and
 - (b) A copy of each record of shipment prepared by the certified public weigher within the previous 12 months.

Authority: T.C.A. §§ 4-3-203; 47-26-805.

Chapter 0080-08-03
Public Weighmaster Regulations

0080-08-03-.01 License Application and Fees

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address; and
 - (c) Proof of qualifications for a public weighmaster license.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a public weighmaster license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) An applicant for licensure under this chapter shall remit its application and biennial license fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the license fee by the following July 31, the applicant shall also be required to pay a \$25 late charge prior to renewal of the

applicant's license.

- (5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1003; 47-26-1008; 47-26-1010.

0080-08-03-.02 Notice of Enforcement Action Against Licensee

Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to licensee's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1003.

Chapter 0080-08-04 Serviceperson Regulations

0080-08-04-.01 Registration Application and Fees

- (1) Application for registration as a serviceperson under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
- (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address;
 - (c) Proof of the applicant's registration in its state of incorporation, registration with the Tennessee Department of Revenue, or business license issued by a local governmental authority, if applicable;
 - (d) Name and address of applicant's registered agent for service of process, if any.
 - (e) Certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which applicant's competence is being registered;
 - (f) Certification by the applicant that the individual or agency has in possession or available for use, and shall use, all necessary testing equipment and standards, and proof that such testing equipment and standards have been certified by the department or by another state weights and measures laboratory that can show current traceability to the National Institute of Standards and Technology;
 - (g) Certification by the applicant that the individual or agency has full knowledge of all appropriate weights and measures laws, orders, rules, and regulations, and has a copy of the most recent edition of the National Institute of Standards and Technology (NIST) Handbook 44, or any subsequent document that replaces it; and
 - (h) Proof of qualifications for a serviceperson registration.
- (2) Registrants shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a serviceperson registration is a Tier 2 biennial fee under T.C.A. §43-1-703(f).

- (4) The fee for a service agency registration is a Tier 3 biennial fee under T.C.A. §43-1-703(f).
- (5) An applicant for registration under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the registration period. Any registration issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's registration.
- (6) The department may deny any application for registration that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1104; 47-26-1105; 47-26-1110; 47-26-1117.

0080-08-04-.02 Notice of Enforcement Action Against Registrant

Notice of an enforcement action against a registrant, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to registrant's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1117.

Repeal

Chapter 0080-05-01 Packaging and Labeling

Chapter 0080-05-01 Packaging and Labeling is repealed in its entirety.

Chapter 0080-05-08 Certified Public Weighers

Chapter 0080-05-08 Certified Public Weighers is repealed in its entirety.

Chapter 0080-05-09 Method of Sale of Commodities

Chapter 0080-05-09 Method of Sale of Commodities is repealed in its entirety.

* 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 01/04/2016 (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: September 4, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). October 30, 2015

Date: Jan 4, 2016

Signature: Julius T. Johnson

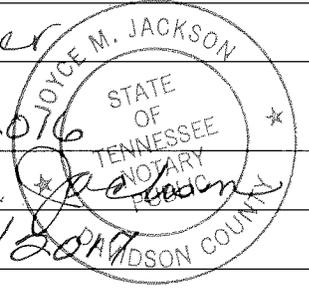
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: Jan 4, 2016

Notary Public Signature: [Signature]

My commission expires on: 09/11/2017



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. Statory III
Herbert H. Statory III
Attorney General and Reporter

3/15/2016
Date

Department of State Use Only

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PUBLICATIONS

Filed with the Department of State on: 3/23/16

Effective on: 6/21/16

[Signature]
Tre Hargett
Secretary of State

Public Hearing Comments

The Department of Agriculture held a public hearing on October 30, 2015. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-01 Packaging and Labeling; 0080-05-08 Certified Public Weighers; 0080-05-09 Method of Sale of Commodities; 0080-08-01 Sales and Fees; 0080-08-02 Certified Public Weigher Regulations; 0080-08-03 Public Weighmaster Regulations; and 0080-08-04 Serviceperson Regulations. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Mr. Daniel Wanke, on behalf of the Surety & Fidelity Association of America (SFAA), indicated that SFAA members issue the vast majority of bonds that secure regulatory obligations. He further indicated SFAA's support for the rule's proposed requirement that certified public weighers post a \$25,000 surety bond incident to their application for licensure. However, SFAA opposes the proposed requirement that the bond be non-cancellable during the term of the license because non-cancellability would unnecessarily expose sureties to greater liability and affect the bonds' availability in the marketplace.

Response:

The Department appreciates Mr. Wanke's comments. Upon review, the Department elects to remove from this rule the bond requirement for certified public weigher licenses. In support of this amendment to the rule, the Department notes that it is unaware of any certified public weigher bond being called since the security requirement for the license was originally instituted by statute in 1981. Additionally, the Department has discovered that the proposed bond requirement of \$25,000 is likely insufficient to secure beneficiaries against damages likely to arise out of violations of the law. In light of this, the Department has determined that requiring licensees to acquire greater security for violations that have been seemingly unlikely to occur would unduly burden licensees seeking the license. Therefore, consistent with the legislature's amendment earlier this year to remove statutory bond requirements for this license, the Department elects to remove the license's bond requirements from its rules as well.

Comment:

Mr. Bob Wallace of Admiral Propane and the Tennessee Propane Gas Association offered his organizations' lack of opposition to fee increases for the annual device fee assessed on liquefied propane gas meters pursuant to T.C.A. §47-26-909. However, Mr. Wallace requested the Department's consideration for mandating annual inspections of liquefied propane gas meters and that those inspections be conducted prior to November 1 of each year so as to avoid inspection of meters during high demand periods for liquefied petroleum.

Response:

The Department appreciates Mr. Wallace's comments and support for this rule. The Department notes that it always strives to conduct inspection services at a time least inconvenient to licensees and the public, while also allowing that proper inspections be conducted. In this case, and with promulgation of this rule, it is also the Department's goal to provide LPG meter inspections on an annual basis. However, the Department believes that solidifying those goals in rule is ill-suited to address variables that change over time for both industry and the Department, e.g. reduced staffing of industry during warm weather months when industry staff will be needed to make LPG equipment available for testing and governmental budget fluctuations that could later decrease departmental staff available to conduct testing. For this reason, the Department acknowledges the comments and offers its agreement with their goals for this program. The Department is committed to meeting those goals, but declines to amend the rule in a manner that might in the future unreasonably obligate either industry or the Department.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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:

Businesses subject to the proposed rule include those that use commercial weighing and measuring equipment, or that employ certified public weigher(s), public weighmaster(s), or equipment servicepersons.

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

Approximately 1,869 weighmasters, 1,085 certified public weighers, and 986 servicepersons or service agencies are registered with the department. Additionally, approximately 8,000 small businesses that use commercial weighing and measuring equipment are registered with the department.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

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

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been reduced or increased in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (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.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

This rule is consistent with title 47, chapter 26, parts 8 – 11 of Tennessee Code for regulation and license and fee requirements of certified public weighers, commercial weights and measures equipment, public weighmasters and servicepersons.

- (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 compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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://state.tn.us/sos/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 creates a new division heading for the Tennessee Department of Agriculture's Weights & Measures program rules and creates a new fee and licensing structure for the program pursuant to amendment of T.C.A. §§ 43-1-703; 47-26-806; 47-26-909; 47-26-1008; and 47-26-1110.

- (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;

T.C.A. §43-1-701, et seq. requires that the department of agriculture establish fees for its regulatory programs through promulgation of rules under the UAPA. T.C.A. 47-26-901, et seq. establishes that basic units of weight and measure, tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology shall govern weighing and measuring equipment and transactions in the state.

- (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;

Businesses using commercial weighing and measuring equipment, certified public weighers, public weighmasters, and servicepersons will be most directly affected by this rule. One public comment was received from the Surety & Fidelity Association of America (SFAA) supporting adoption of the rule's bond requirement for certified public weigher licenses but also urging amendment of the bond requirement that the bond be non-cancellable for the term of the license. No other public comments have been received urging adoption or rejection of this rule.

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

There are no attorney general or court decisions in this state that directly relate to this rule.

- (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;

These rules will generate an additional \$716,123 of revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing weights and measures inspections services by the department, up from 53% cost recovery provided by the current fee structure.

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

David Waddell, Administrative Director; Robert Williams, Weights and Measures Administrator; and Charles Coleman, Fuel Quality Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

(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) 837-5331; david.waddell@tn.gov

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

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Redline Copy of Rule Filing

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
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Revision Type (check all that apply):

- Amendment
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 Repeal

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 enter only ONE Rule Number/Rule Title per row)

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Rule Number	Rule Title

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0080-05-08	Repealed
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0080-08-04-.02	Notice of Enforcement Action Against Registrant

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Division 0080-08 Weights and Measures is created.

Authority: T.C.A. §4-3-203.

Chapter 0080-08-01
Commodity Sales and Fees

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The department adopts by reference, as if fully stated herein, the standards titled "Uniform Regulation for the Method of the Sale of Commodities" as published in the National Institute of Standards and Technology (NIST) Handbook 130 issued by the U.S. Department of Commerce, as it may be amended from time to time, provided that its Sections 2.19 Kerosene and 2.20 Gasoline-Oxygenate Blends are not adopted and shall not apply to methods of sale regulated by the department.

Authority: T.C.A. §§ 4-3-203; 47-26-909.

0080-08-01-.02 Weights and Measures Equipment Fees

Annual fee requirements for commercial weighing and measuring equipment in the state are assessed according to T.C.A. §43-1-703(f), and are as follows:

(1) Liquid measuring equipment.

- (a) Regular Flow. Regular flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A regular flow device is rated by its manufacturer as capable of measuring volumes dispensed at a rate less than 20 gallons per minute, or the metric equivalent. The fee for regular flow

liquid measuring devices is based on the number of grade selection buttons at the facility, as follows:

1. 1 – 6 grade selection buttons: Tier 1 fee;
2. 7 – 12 grade selection buttons: Tier 2 fee;
3. 13 – 18 grade selection buttons: Tier 3 fee;
4. 19 – 24 grade selection buttons: Tier 4 fee;
5. 25 – 30 grade selection buttons: Tier 5 fee;
6. 31 – 36 grade selection buttons: Tier 6 fee;
7. 37 – 54 grade selection buttons: Tier 7 fee;
8. 55 – 78 grade selection buttons: Tier 9 fee;
9. More than 78 grade selection buttons: Tier 10 fee.

(b) High Flow. High flow means liquid measuring equipment kept or used for measuring liquids sold at retail. A high flow device is rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than or equal to 20 gallons per minute, or the metric equivalent.

1. 1 – 6 dispensers: Tier 3 fee;
2. More than 6 dispensers: Tier 6 fee.

(c) Liquefied Products. Liquefied products refer to liquid measuring equipment kept or used for measuring the following liquids sold at retail.

1. Liquefied Petroleum Gas Measuring Equipment: Tier 3 fee per meter;
2. Liquefied Natural Gas Measuring Equipment: Tier 6 fee per meter.

(d) Bulk Meters. The following fees apply to liquid measuring equipment kept or used for measuring liquids sold in non-retail transactions and liquid measuring meters mounted on vehicles.

1. Liquefied Petroleum Gas Bulk Meter: Tier 3 fee per meter;
2. Mass Flow Meter: Tier 11 fee per meter;
3. Vehicle Tank Meter: Tier 3 fee per meter;
4. Liquid Measuring Equipment – Wholesale, ≤ 100 gallons/minute: Tier 3 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate less than or equal to 100 gallons per minute, or the metric equivalent;
5. Liquid Measuring Equipment – Wholesale, > 100 gallons/minute: Tier 4 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than 100 gallons per minute, or the metric equivalent.

(2) Gaseous material measuring equipment. The following fees apply to devices kept or used for measuring gaseous materials sold in retail or non-retail transactions.

Compressed Natural Gas Measuring Equipment: Tier 6 fee per meter.

(3) Scales. The following fees are payable based on the number of scales used or kept in commerce.

(a) Small Scales. Small scales mean weighing equipment rated by its manufacturer as capable of weighing up to 2,500 pounds, or the metric equivalent.

1. 1 – 5 small scales: Tier 1 fee;

2. 6 – 20 small scales: Tier 4 fee;

3. More than 20 small scales: Tier 6 fee.

(b) Large Scales. Large scales mean weighing equipment rated by its manufacturer as capable of weighing 2,500 pounds or more, or the metric equivalent.

1. 1 – 2 large scales: Tier 4 fee;

2. More than 2 large scales: Tier 6 fee.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-909.

0080-08-01-.03 Metrology Fees [RESERVED]

Chapter 0080-08-02 Certified Public Weigher Regulations

0080-08-02-.01 License Application and Fees

(1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:

(a) Name of the applicant;

(b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address.

(2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.

(3) The fee for a certified public weigher license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).

(4) An applicant for licensure under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's license.

(5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-805; 47-26-806.

0080-08-02-.02 Record of Shipment

(1) A certified public weigher shall prepare a record of shipment for any natural resource product sold by a producer or supplier. The certified public weigher shall prepare the record of shipment in writing prior to shipment of the natural resource product to its purchaser. The record of shipment shall contain the

following information:

- (a) Signature of the certified public weigher;
 - (b) Seal of the certified public weigher;
 - (c) Name of the supplier or producer;
 - (d) Name of the purchaser;
 - (e) Date of the transaction;
 - (f) Gross vehicular weight;
 - (g) License number(s) for the truck(s) on which the product is shipped; and
 - (h) The number of axles on each respective truck.
- (2) For each facility where a certified public weigher operates a scale or weight recording equipment, the certified public weigher shall maintain:
- (a) A file listing of all trucks weighed at the facility within the previous 12 months. For each truck included in the listing, the certified public weigher shall record the license number and the number of axles on the truck; and
 - (b) A copy of each record of shipment prepared by the certified public weigher within the previous 12 months.

Authority: T.C.A. §§ 4-3-203; 47-26-805.

Chapter 0080-08-03
Public Weighmaster Regulations

0080-08-03-.01 License Application and Fees

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
- (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address; and
 - (c) Proof of qualifications for a public weighmaster license.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a public weighmaster license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) An applicant for licensure under this chapter shall remit its application and biennial license fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the license fee by the following July 31, the applicant shall also be required to pay a \$25 late charge prior to renewal of the applicant's license.
- (5) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1003; 47-26-1008; 47-26-1010.

0080-08-03-.02 Notice of Enforcement Action Against Licensee

Notice of an enforcement action against a licensee, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to licensee's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1003.

Chapter 0080-08-04
Serviceperson Regulations

0080-08-04-.01 Registration Application and Fees

- (1) Application for registration as a serviceperson under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address;
 - (c) Proof of the applicant's registration in its state of incorporation, registration with the Tennessee Department of Revenue, or business license issued by a local governmental authority, if applicable;
 - (d) Name and address of applicant's registered agent for service of process, if any.
 - (e) Certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which applicant's competence is being registered;
 - (f) Certification by the applicant that the individual or agency has in possession or available for use, and shall use, all necessary testing equipment and standards, and proof that such testing equipment and standards have been certified by the department or by another state weights and measures laboratory that can show current traceability to the National Institute of Standards and Technology;
 - (g) Certification by the applicant that the individual or agency has full knowledge of all appropriate weights and measures laws, orders, rules, and regulations, and has a copy of the most recent edition of the National Institute of Standards and Technology (NIST) Handbook 44, or any subsequent document that replaces it; and
 - (h) Proof of qualifications for a serviceperson registration.
- (2) Registrants shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a serviceperson registration is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) The fee for a service agency registration is a Tier 3 biennial fee under T.C.A. §43-1-703(f).
- (5) An applicant for registration under this chapter shall remit its application and biennial registration fee to the department on or before July 1 of the registration period. Any registration issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the

registration fee by the following July 16, the applicant shall also be required to pay a late charge under T.C.A. §43-1-703 prior to renewal of the applicant's registration.

(6) The department may deny any application for registration that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 47-26-1104; 47-26-1105; 47-26-1110; 47-26-1117.

0080-08-04-.02 Notice of Enforcement Action Against Registrant

Notice of an enforcement action against a registrant, including but not limited to assessment of a civil penalty and conduct of an administrative hearing, shall be presumed properly served upon mailing of notice to registrant's address of record with the department.

Authority: T.C.A. §§ 4-3-203; 47-26-1117.

Repeal

Chapter 0080-05-01
Packaging and Labeling

Chapter 0080-05-01 Packaging and Labeling is repealed in its entirety.

**RULES
OF
TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF QUALITY AND STANDARDS**

**CHAPTER 0080-5-1
PACKAGING AND LABELING**

The Department of Agriculture adopts the standards titled "Uniform Packaging and Labeling Regulation" as adopted by the National Conference on Weights and Measures and published in the most recent version of the National Institute of Standards and Technology (NIST) Handbook 130 issued by the U. S. Department of Commerce.

Authority: T.C.A. §47-26-207. *Administrative History:* Original rule certified June 5, 1974. Repealed by Public Chapter 261; effective July 1, 1983. Repeal and new rule filed June 20, 1983; effective September 14, 1983. Repeal and new rule filed January 23, 1995; effective April 8, 1995.

Chapter 0080-05-08
Certified Public Weighers

Chapter 0080-05-08 Certified Public Weighers is repealed in its entirety.

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
MARKETING DIVISION**

**CHAPTER 0080-5-8
CERTIFIED PUBLIC WEIGHERS**

TABLE OF CONTENTS

0080-5-8-.01 — Contents of the Record of Shipment ————— 0080-5-8-.02 — Maintenance of Records

~~0080-5-8-.01 CONTENTS OF THE RECORD OF SHIPMENT.~~

- (1) ~~The Record of Shipment, prepared by the certified public weigher to serve as the ticket for the purchaser, shall contain the following information:~~
- ~~(a) — The signature of the certified public weigher;~~
 - ~~(b) — The seal of the certified public weigher;~~
 - ~~(c) — The name of the supplier;~~
 - ~~(d) — The name of the purchaser;~~
 - ~~(e) — The date of transaction; and~~
 - ~~(f) — The gross vehicular weight.~~
- (2) ~~The certified public weigher shall maintain within his easy access a file that contains a listing of all trucks regularly weighed at that facility. This file shall contain the following information and be updated on a regular basis:~~
- ~~(a) — The number of axles on the truck, and~~
 - ~~(b) — The license number of the truck.~~
- (3) ~~A record of shipment must contain the number of axles and the license number of the particular truck in addition to the information required in paragraph (1) if the information is not contained in a file as provided in paragraph (2).~~

~~Authority: T.C.A. §§71-805 and 71-810. Administrative History: Original rule filed January 5, 1983; effective February 4, 1983.~~

~~0080-5-8-.02 MAINTENANCE OF RECORDS.~~

~~A copy of each record of shipment prepared by the certified public weigher shall be maintained on the plant site for at least one (1) year.~~

~~Authority: T.C.A. §§71-805 and 71-810. Administrative History: Original rule filed January 5, 1983; effective February 4, 1983.~~

Chapter 0080-05-09
Method of Sale of Commodities

Chapter 0080-05-09 Method of Sale of Commodities is repealed in its entirety.

**RULES
OF
TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF QUALITY AND STANDARDS**

**CHAPTER 0080-5-9
METHOD OF SALE OF COMMODITIES**

~~The Department of Agriculture adopts the standards titled "Uniform Regulation for the Method of the Sale of Commodities" as adopted by the National Conference on Weights and Measures and published in the most recent version of the National Institute of Standards and Technology, (NIST) Handbook 130 issued by the U.S. Department of Commerce, with the exception that the Department does not adopt Section 2.19 Kerosene, and 2.20 Gasoline Oxygenate Blends.~~

Authority: T.C.A. §47-26-207. *Administrative History:* Original rule filed June 4, 1986; effective July 4, 1986. Repeal and new rule filed January 23, 1995; effective April 8, 1995.

* 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 _____ (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: September 4, 2015

Rulemaking Hearing(s) Conducted on: (add more dates). October 30, 2015

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

The Department of Agriculture held a public hearing on October 30, 2015. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-01 Packaging and Labeling; 0080-05-08 Certified Public Weighers; 0080-05-09 Method of Sale of Commodities; 0080-08-01 Sales and Fees; 0080-08-02 Certified Public Weigher Regulations; 0080-08-03 Public Weighmaster Regulations; and 0080-08-04 Serviceperson Regulations. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Mr. Daniel Wanke, on behalf of the Surety & Fidelity Association of America (SFAA), indicated that SFAA members issue the vast majority of bonds that secure regulatory obligations. He further indicated SFAA's support for the rule's proposed requirement that certified public weighers post a \$25,000 surety bond incident to their application for licensure. However, SFAA opposes the proposed requirement that the bond be non-cancellable during the term of the license because non-cancellability would unnecessarily expose sureties to greater liability and affect the bonds' availability in the marketplace.

Response:

The Department appreciates Mr. Wanke's comments. Upon review, the Department elects to remove from this rule the bond requirement for certified public weigher licenses. In support of this amendment to the rule, the Department notes that it is unaware of any certified public weigher bond being called since the security requirement for the license was originally instituted by statute in 1981. Additionally, the Department has discovered that the proposed bond requirement of \$25,000 is likely insufficient to secure beneficiaries against damages likely to arise out of violations of the law. In light of this, the Department has determined that requiring licensees to acquire greater security for violations that have been seemingly unlikely to occur would unduly burden licensees seeking the license. Therefore, consistent with the legislature's amendment earlier this year to remove statutory bond requirements for this license, the Department elects to remove the license's bond requirements from its rules as well.

Comment:

Mr. Bob Wallace of Admiral Propane and the Tennessee Propane Gas Association offered his organizations' lack of opposition to fee increases for the annual device fee assessed on liquefied propane gas meters pursuant to T.C.A. §47-26-909. However, Mr. Wallace requested the Department's consideration for mandating annual inspections of liquefied propane gas meters and that those inspections be conducted prior to November 1 of each year so as to avoid inspection of meters during high demand periods for liquefied petroleum.

Response:

The Department appreciates Mr. Wallace's comments and support for this rule. The Department notes that it always strives to conduct inspection services at a time least inconvenient to licensees and the public, while also allowing that proper inspections be conducted. In this case, and with promulgation of this rule, it is also the Department's goal to provide LPG meter inspections on an annual basis. However, the Department believes that solidifying those goals in rule is ill-suited to address variables that change over time for both industry and the Department, e.g. reduced staffing of industry during warm weather months when industry staff will be needed to make LPG equipment available for testing and governmental budget fluctuations that could later decrease departmental staff available to conduct testing. For this reason, the Department acknowledges the comments and offers its agreement with their goals for this program. The Department is committed to meeting those goals, but declines to amend the rule in a manner that might in the future unreasonably obligate either industry or the Department.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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:

Businesses subject to the proposed rule include those that use commercial weighing and measuring equipment, or that employ certified public weigher(s), public weighmaster(s), or equipment servicepersons.

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

Approximately 1,869 weighmasters, 1,085 certified public weighers, and 986 servicepersons or service agencies are registered with the department. Additionally, approximately 8,000 small businesses that use commercial weighing and measuring equipment are registered with the department.

- (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:

Reporting, recordkeeping, and other administrative costs of small businesses are unaffected by this rule inasmuch as the rule does not alter or duplicate those reporting or recordkeeping requirements otherwise applicable under existing regulation.

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

The effect of these rules on small businesses is to require additional information from license applicants in order to verify their business and contact information and to alter the fee schedule for the programs' licenses. Fees have been reduced or increased in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the program.

- (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.

These rules are promulgated to implement Public Chapter 485 of 2015, which expanded the Agricultural Regulatory Fund to include all fee-generated revenue collected by the department. As part of the legislation, all fee amounts charged by the department were removed from the Code, and the commissioner of agriculture was authorized to set the fee amounts by regulation. The intent of the legislation is to allow the department to adjust fees and to improve the percentage of cost recovery for its programs through fee collection rather than relying as heavily on revenue from the general fund.

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

This rule is consistent with title 47, chapter 26, parts 8 – 11 of Tennessee Code for regulation and license and fee requirements of certified public weighers, commercial weights and measures equipment, public weighmasters and servicepersons.

- (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 compromise the intent to grade fee schedules according to resources expended for oversight of regulatory programs.

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://state.tn.us/sos/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 creates a new division heading for the Tennessee Department of Agriculture's Weights & Measures program rules and creates a new fee and licensing structure for the program pursuant to amendment of T.C.A. §§ 43-1-703; 47-26-806; 47-26-909; 47-26-1008; and 47-26-1110.

- (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;

T.C.A. §43-1-701, et seq. requires that the department of agriculture establish fees for its regulatory programs through promulgation of rules under the UAPA. T.C.A. 47-26-901, et seq. establishes that basic units of weight and measure, tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology shall govern weighing and measuring equipment and transactions in the state.

- (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;

Businesses using commercial weighing and measuring equipment, certified public weighers, public weighmasters, and servicepersons will be most directly affected by this rule. One public comment was received from the Surety & Fidelity Association of America (SFAA) supporting adoption of the rule's bond requirement for certified public weigher licenses but also urging amendment of the bond requirement that the bond be non-cancellable for the term of the license. No other public comments have been received urging adoption or rejection of this rule.

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

There are no attorney general or court decisions in this state that directly relate to this rule.

- (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;

These rules will generate an additional \$716,123 of revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing weights and measures inspections services by the department, up from 53% cost recovery provided by the current fee structure.

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

David Waddell, Administrative Director; Robert Williams, Weights and Measures Administrator; and Charles Coleman, Fuel Quality Administrator, Tennessee Department of Agriculture, Consumer and Industry Services Division

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Consumer and Industry Services Division

(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) 837-5331; david.waddell@tn.gov

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