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Sequence Number: 03-17-16
 Rule ID(s): 6150-6153
 File Date: 3/24/16
 Effective Date: 6/22/16

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
0080-05-05	Regulations Pertaining to Tennessee Commercial Feed Law
Rule Number	Rule Title
0080-05-05-.19	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-06	Seed Regulations
Rule Number	Rule Title
0080-05-06-.05	Repealed
0080-05-06-.14	License Fees and Seed Unit Reports
0080-05-06-.15	Repealed

Chapter Number	Chapter Title
0080-05-10	Commercial Fertilizers Regulations
Rule Number	Rule Title
0080-05-10-.09	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-15	Agricultural Liming Materials
Rule Number	Rule Title
0080-05-15-.07	License Fees and Tonnage Reports

New

Chapter 0080-05-15
Agricultural Liming Materials

0080-05-15-.07 License Fees and Tonnage Reports

- (1) License fee. Every manufacturer of agricultural liming materials shall pay an annual license fee based on the weight of the materials distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of liming materials distributed by 1,000 tons and multiplying the dividend by a Tier 3 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) Annual statement. Every manufacturer required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of agricultural liming materials the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-405; 43-11-410.

Amendments

Chapter 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972 is amended by re-titling the chapter "Regulations Pertaining to Tennessee Commercial Feed Law".

0080-05-05-.19 Inspection Fees – Reports is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-05
Regulations Pertaining to Tennessee Commercial Feed Law

0080-05-05-.19 License Fees and Tonnage Reports

- (1) License fee. Every manufacturer, distributor, or guarantor of commercial feed shall pay an annual license fee based on the weight of the feed distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of feed distributed by 350 tons and multiplying the dividend by a Tier 2 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer, distributor, or guarantor pay less than a Tier 2 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) Annual statement. Every manufacturer, distributor, or guarantor required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of commercial feed distributed in the state during the previous licensure year, with the following exemptions.
 - (a) Feed need not be reported in the annual statement if:
 1. The feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing;
 2. The feed is used as an ingredient in the manufacture of a registered commercial feed; or,

3. The annual statement is that of a contract feeder.
- (b) Customer-formula feed need not be reported in the annual statement if all the commercial feed used as ingredients in the customer-formula feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing.
- (c) The department may credit payment of annual license fees that have been paid based on reporting of feed exempt from these annual statement reporting requirements.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 44-6-104; 44-6-110.

0080-05-06-.14 Payment of Inspection Fees by Reporting System is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-06
Seed Regulations

0080-05-06-.14 License Fees and Seed Unit Reports

- (1) License fee. Every seed seller—whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall pay an annual license fee based on the quantity of seed units sold in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by subtracting 3,000 seed units from the total number of seed units sold; dividing the difference by 600 seed units; and multiplying the dividend by a Tier 1 fee under T.C.A. §43-1-703(f). In no event shall any seed seller pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) For purposes of this rule, seed unit means:
 - (a) A container of seed six lbs. to 100 lbs.;
 - (b) A hundredweight of seed sold in bulk;
 - (c) A package of tobacco seed two ounces or less; or
 - (d) A case of seed in packages of less than five pounds.
- (3) Annual statement. Every seed seller required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of seed units the seed seller sold in the state during the previous licensure year, provided that no seed units need be reported in the annual statement if the seed units have been previously reported to the department and calculated in the annual license fee of a seed seller in good standing.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-10-114; 43-10-118.

0080-05-10-.09 Tonnage Reports and Inspection Fees is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-10
Commercial Fertilizers Regulations

0080-05-10-.09 License Fees and Tonnage Reports

- (1) License fee. Every person who distributes commercial fertilizer in the state shall pay an annual license fee based on the weight and number of brands of commercial fertilizer distributed in the state during the previous licensure year (July 1 – June 30).
 - (a) Weight. The weight component of the license fee shall be determined by dividing the total number of tons of commercial fertilizer distributed by 1,000 tons and multiplying the dividend by a Tier 5 fee under T.C.A. §43-1-703(f). In no event shall any person pay less than a Tier 3 fee under §43-1-703(f) for the weight component of annual license fee under this chapter.
 - (b) Brands. The brands component of the license fee shall be determined by subtracting 10 brands from the total number of brands of commercial fertilizer distributed; dividing the difference by five brands; and multiplying the dividend by a Tier 6 fee under T.C.A. §43-1-703(f). The brands component shall not apply to any person who distributed 10 brands of commercial fertilizer or less during the previous licensure year.
 - (c) The annual fee for a commercial fertilizer license shall be the sum of the weight component and brands component calculated under this rule.
- (2) Annual statement. Every person required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons and number of brands of commercial fertilizer the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-104; 43-11-113.

Repeal

Chapter 0080-05-06 Seed Regulations

0080-05-06-.05 Labeling Treated Seed is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-10-114.

0080-05-06-.15 Seed Inspection Fees for Seeds in Small Containers is repealed in its entirety.

Authority: T.C.A. §§ 4-3-203; 43-10-114.

* 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 03/02/2016 (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: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

Date: 03/02/2016

Signature: *Julius T. Johnson*

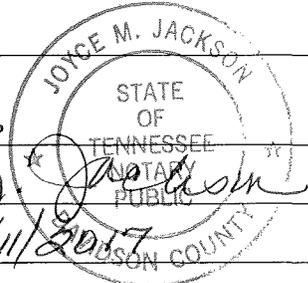
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: 03/02/2016

Notary Public Signature: *Joyce M. Jackson*

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

3/18/2016
Date

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Filed with the Department of State on: 3/24/16

Effective on: 6/22/14

Tre Hargett
Tre Hargett
Secretary of State

Public Hearing Comments

The Department of Agriculture held a public hearing on February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972; 0080-05-06 Seed Regulations; 0080-05-10 Commercial Fertilizer Regulations; and 0080-05-15 Agricultural Liming Materials. 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 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 agricultural and vegetable seed sellers, agricultural lime manufacturers, commercial fertilizer registrants, and commercial feed manufacturers and distributors in the state.

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

Approximately 1700 affected firms will 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:

Reporting, recordkeeping, and other administrative costs of small businesses are anticipated to be lessened where previous rules required quarterly tonnage reporting of agricultural inputs manufactured or distributed and this rule requires those reports be made annually.

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

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the agricultural inputs 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:

Most states maintain similar requirements for reporting of agricultural inputs and payment of license and/or registration fees for inputs manufactured or distributed in those states.

- (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 adulterated or misbranded agricultural inputs and will 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 adjusts fee schedules for licenses and inspection services conducted by the department of agriculture's agricultural inputs program, pursuant to amendment of the Agricultural Regulatory Fund law.

- (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;

Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Seed Law of 1986, the Tennessee Commercial Fertilizer Law of 1969, the Tennessee Agricultural Liming Materials Act, the Tennessee Commercial Feed Law of 1972, and the costs of the department. See Tenn. Code Ann. §§ 43-10-118; 43-11-104; 43-11-405; and 44-6-104.

- (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;

Agricultural and vegetable seed sellers, agricultural lime manufacturers, commercial fertilizer registrants, and commercial feed manufacturers and distributors are most directly affected by this rule. No 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;

No material opinions or judicial rulings related to this rule have been found.

- (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 are expected to generate an additional \$227,022 of revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing agricultural inputs inspection services by the department, up from 81% 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, and Dan Danielson, Agricultural Inputs 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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JULIUS JOHNSON
COMMISSIONER

TENNESSEE DEPARTMENT OF AGRICULTURE

CONSUMER AND INDUSTRY SERVICES

February 29, 2016

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

RE: Rulemaking Hearing February 29, 2016

I served as hearing officer for the Rulemaking Hearing on February 29, 2016, concerning 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972; 0080-05-06 Seed Regulations; 0080-05-10 Commercial Fertilizer Regulations; and 0080-05-15 Agricultural Liming Materials.

There were no questions or comments from the public during the hearing.

Sincerely,

K. David Waddell /s/

K. David Waddell
Administrative Director

**Department of State
Division of Publications**

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Nashville, TN 37243
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Redline Copy of 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
0080-05-05	Regulations Pertaining to Tennessee Commercial Feed Law
Rule Number	Rule Title
0080-05-05-.19	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-06	Seed Regulations
Rule Number	Rule Title
0080-05-06-.05	Repealed
0080-05-06-.14	License Fees and Seed Unit Reports
0080-05-06-.15	Repealed

Chapter Number	Chapter Title
0080-05-10	Commercial Fertilizers Regulations
Rule Number	Rule Title
0080-05-10-.09	License Fees and Tonnage Reports

Chapter Number	Chapter Title
0080-05-15	Agricultural Liming Materials
Rule Number	Rule Title
0080-05-15-.07	License Fees and Tonnage Reports

New

Chapter 0080-05-15
Agricultural Liming Materials

0080-05-15-.07 License Fees and Tonnage Reports

- (1) License fee. Every manufacturer of agricultural liming materials shall pay an annual license fee based on the weight of the materials distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of liming materials distributed by 1,000 tons and multiplying the dividend by a Tier 3 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) Annual statement. Every manufacturer required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of agricultural liming materials the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-405; 43-11-410.

Amendments

Chapter 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972 is amended by re-titling the chapter “Regulations Pertaining to Tennessee Commercial Feed Law of 1972”.

0080-05-05-.19 Inspection Fees – Reports is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-05
Regulations Pertaining to Tennessee Commercial Feed Law

0080-05-05-.19 INSPECTION FEES – REPORTS–License Fees and Tonnage Reports

- (1) The person responsible for paying the inspection fees shall file a quarterly report stating the tonnage of all commercial feed that the person manufactured or distributed in this State or stating that no tonnage of commercial feed was distributed during that quarter. Each quarterly tonnage report shall be accompanied by payment of the inspection fee due based on the tonnage reported for that quarter.–License fee. Every manufacturer, distributor, or guarantor of commercial feed shall pay an annual license fee based on the weight of the feed distributed in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by dividing the total tons of feed distributed by 350 tons and multiplying the dividend by a Tier 2 fee under T.C.A. §43-1-703(f). In no event shall any manufacturer, distributor, or guarantor pay less than a Tier 2 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.
- (2) The report of tonnage and inspection fee shall be due and payable on a quarterly basis on the fifteenth day of the following quarter (fifteenth day of April, July, October, and January), covering the tonnage of commercial feeding stuffs sold during the past quarter. Annual statement. Every manufacturer, distributor, or guarantor required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons of commercial feed distributed in the state during the previous licensure year, with the following exemptions.
 - (a) Feed need not be reported in the annual statement if:

1. The feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing;
 2. The feed is used as an ingredient in the manufacture of a registered commercial feed; or,
 3. The annual statement is that of a contract feeder.
- (b) Customer-formula feed need not be reported in the annual statement if all the commercial feed used as ingredients in the customer-formula feed has been previously reported to the department and calculated in the annual license fee of a manufacturer, distributor, or guarantor in good standing.
- (c) The department may credit payment of annual license fees that have been paid based on reporting of feed exempt from these annual statement reporting requirements.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 44-6-104; 44-6-110.

0080-05-06-.14 Payment of Inspection Fees by Reporting System is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-06
Seed Regulations

0080-05-06-.14 ~~PAYMENT OF INSPECTION FEES BY REPORTING SYSTEM.~~ License Fees and Seed Unit Reports

- (1) ~~Each seedsman shall make application to the Commissioner for a permit to report the quantity of seed sold and to pay the inspection fees applicable under the Tennessee Seed Law. The Commissioner may grant, in his discretion, the permit bearing an assigned number. Upon granting such permit, the Commissioner shall require each seedsman to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold. Such records shall be made available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seedsman shall report quarterly on forms furnished by the Commissioner the quantity and container weights of seeds sold. The reports shall be on the 15th of January, April, July and October. If the report is not filed and the inspection fees are not paid by the 10th day following due date, a penalty of ten percent (10%) shall be added to the inspection fees due. Reports shall be filed each quarter whether or not any sales were made during the reporting period. License fee. Every seed seller—whose name appears on the analysis label affixed to the bag, on the bulk container, or shipping invoice at the time of sale of seeds to a non-labeler—shall pay an annual license fee based on the quantity of seed units sold in the state during the previous licensure year (July 1 – June 30). The fee shall be determined by subtracting 3,000 seed units from the total number of seed units sold; dividing the difference by 600 seed units; and multiplying the dividend by a Tier 1 fee under T.C.A. §43-1-703(f). In no event shall any seed seller pay less than a Tier 3 fee under T.C.A. §43-1-703(f) for an annual license under this chapter.~~
- (2) For purposes of this rule, seed unit means:
- (a) A container of seed six lbs. to 100 lbs.;
 - (b) A hundredweight of seed sold in bulk;
 - (c) A package of tobacco seed two ounces or less; or
 - (d) A case of seed in packages of less than five pounds.
- (3) ~~The seedsman whose name appears on the analysis label affixed to the bag at time of sale will be~~

responsible for the inspection fees. However, in cases when a licensed Tennessee seedsman purchases or receives agricultural or vegetable seeds for seeding purposes from a seedsman located outside the State of Tennessee, the fee may be paid by either seedsman, but final responsibility rests with the Tennessee seedsman. Invoices pertaining to the sale of seed shall indicate which seedsman is responsible for reporting and paying the inspection fee by showing the statement "Tennessee Inspection Fee Paid" or "Tennessee Inspection Fee Not Paid – Responsibility of Purchaser." Any subsequent sale of seed on which the fee has been reported and paid will not be subject to further reporting fees. Annual statement. Every seed seller required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of seed units the seed seller sold in the state during the previous licensure year, provided that no seed units need be reported in the annual statement if the seed units have been previously reported to the department and calculated in the annual license fee of a seed seller in good standing.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-10-114; 43-10-118.

0080-05-10-.09 Tonnage Reports and Inspection Fees is amended by deleting the rule in its entirety and substituting instead the following language, so that as amended the rule shall read:

Chapter 0080-05-10
Commercial Fertilizers Regulations

0080-05-10-.09 ~~TONNAGE REPORTS AND INSPECTION FEES.~~ License Fees and Tonnage Reports

~~Each distributor and registrant shall be furnished forms by the Commissioner which will set forth a format whereby codes (for fertilizer materials, counties, manufacturers, etc.) are to be used wherever applicable. Each distributor and registrant shall report in summary form the amount (tons or fractions thereof) of each grade of fertilizer sold, the county in which the fertilizer was distributed (bag, bulk, liquid, or other forms), and whether the fertilizer was for farm or non-farm use. This summary report shall further be used as a basis for the payment of inspection fees and this report along with the inspection fees shall be due quarterly (ending on the last day of March, June, September and December) and submitted by the 15th day of month immediately following. This report may be supplemented by a computerized summary upon approval by the Commissioner or his agent if that computerized summary contains all of the required data in the proper sequence.~~

- (1) License fee. Every person who distributes commercial fertilizer in the state shall pay an annual license fee based on the weight and number of brands of commercial fertilizer distributed in the state during the previous licensure year (July 1 – June 30).
 - (a) Weight. The weight component of the license fee shall be determined by dividing the total number of tons of commercial fertilizer distributed by 1,000 tons and multiplying the dividend by a Tier 5 fee under T.C.A. §43-1-703(f). In no event shall any person pay less than a Tier 3 fee under §43-1-703(f) for the weight component of annual license fee under this chapter.
 - (b) Brands. The brands component of the license fee shall be determined by subtracting 10 brands from the total number of brands of commercial fertilizer distributed; dividing the difference by five brands; and multiplying the dividend by a Tier 6 fee under T.C.A. §43-1-703(f). The brands component shall not apply to any person who distributed 10 brands of commercial fertilizer or less during the previous licensure year.
 - (c) The annual fee for a commercial fertilizer license shall be the sum of the weight component and brands component calculated under this rule.
- (2) Annual statement. Every person required to pay an annual license fee under this chapter shall file with the department on or before July 1 an annual statement indicating the number of net tons and number of brands of commercial fertilizer the person distributed in the state during the previous licensure year.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 43-11-104; 43-11-113.

Repeal

Chapter 0080-05-06
Seed Regulations

0080-05-06-.05 Labeling Treated Seed is repealed in its entirety.

~~0080-05-06-.05 LABELING TREATED SEED.~~

~~Any agricultural or vegetable seed for seeding purposes, that has been treated:~~

- ~~(1) Shall be labeled in type no smaller than eight points to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed, for example~~

~~Treated with _____
(Name of substance or process)
or _____ treated.
(Name of substance or process)~~

~~If the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall also bear a label containing statements as specified by paragraphs (3) and (4) below. The label shall contain the required information in any form that is clearly legible and complies with this regulation. The information may be on the analysis tag, on a separate tag or printed on the container in a conspicuous manner.~~

- ~~(2) Name of substance — the name of any substance as required by paragraph (1) of this section shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are free for use by the public and are commonly recognized as names of particular substances such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are: bluestone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are BHC (1, 2, 3, 4, 5, 6, Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane).~~

- ~~(3) Mercurials and similarly toxic substances —~~

~~(a) Seeds treated with a mercurial or similarly toxic substance, if any amount whatsoever remains with the seed, shall be labeled to show a representation of a skull and crossbones at least twice the size of the type used for information required to be on the label under paragraph (1) and shall also include in red letters on a background of distinctly contrasting color a statement substantially as follows: "Treated with Poison," "Poison Treated," or "Poison." Such treatment shall appear in type no smaller than eight points.~~

~~(b) Substances similarly toxic to mercurial include the following: Aldrin (technical), Demeton, Dieldrin, Endrin, Heptachlor, O, O-diethyl S — (ethylthiomethyl) phosphorodithiolate and O, O-diethyl S-2 (ethylthion) ethyl Phosphorodithiolate. Any amount of such substances remaining with the seed shall be considered harmful to humans and other vertebrate animals.~~

- ~~(4) Other harmful substances — If any substance, other than one which would be classified as a mercurial or similarly toxic substance under paragraph (3) is used in the treatment of seed; the amount remaining with the seed is considered harmful to humans or other vertebrate animals unless the seed is in containers of four ounces or less. Seed treated with such substances shall be labeled with an appropriate caution statement in type no smaller than eight points worded substantially as follows: "Do not use for food, feed, or oil purposes." This paragraph applies to all chemical substances not within paragraph (3) except that the following substances shall not be deemed harmful when present at a rate less than the number of parts per million indicated:~~

Allethrin—2 p.p.m.

Malathion—8 p.p.m.

Methoxycler—2 p.p.m.

Piperonyl butoxide—20 p.p.m. except 8 p.p.m. on Oat and Sorghum

Pyrethrins—3 p.p.m. except 1 p.p.m. on Oat and Sorghum

(5) ~~Fumigants which leave no residue on the seed shall not be deemed harmful, therefore need not be included on label.~~

Authority: T.C.A. §§ 4-3-203; 43-10-114.

0080-05-06-.15 Seed Inspection Fees for Seeds in Small Containers is repealed in its entirety.

~~0080-05-06-.15 SEED INSPECTION FEES FOR SEEDS IN SMALL CONTAINERS.~~

~~For agricultural or vegetable seeds in containers of five (5) pounds or less not sold by the case:~~

(1) ~~Agricultural or vegetable seeds sold in individual containers, with a wholesale value of fifteen dollars (\$15.00) or greater, shall be paid at three (3) cents for each container.~~

(2) ~~Agricultural or vegetable seeds sold in individual containers, of less than fifteen dollars (\$15.00) wholesale value, shall be exempt.~~

Authority: T.C.A. §§ 4-3-203; 43-10-114.

* 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: 01/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). 02/29/16

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 February 29, 2016. David Waddell served as hearing officer for the Rulemaking Hearing concerning 0080-05-05 Regulations Pertaining to Tennessee Commercial Feed Law of 1972; 0080-05-06 Seed Regulations; 0080-05-10 Commercial Fertilizer Regulations; and 0080-05-15 Agricultural Liming Materials. 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 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 agricultural and vegetable seed sellers, agricultural lime manufacturers, commercial fertilizer registrants, and commercial feed manufacturers and distributors in the state.

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

Approximately 1700 affected firms will 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:

Reporting, recordkeeping, and other administrative costs of small businesses are anticipated to be lessened where previous rules required quarterly tonnage reporting of agricultural inputs manufactured or distributed and this rule requires those reports be made annually.

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

The effect of these rules on small businesses is to adjust fees in an effort to better grade the department's fee schedule among small and large business licensees according to departmental expenditures in regulating the agricultural inputs 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:

Most states maintain similar requirements for reporting of agricultural inputs and payment of license and/or registration fees for inputs manufactured or distributed in those states.

- (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 adulterated or misbranded agricultural inputs and will 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 adjusts fee schedules for licenses and inspection services conducted by the department of agriculture's agricultural inputs program, pursuant to amendment of the Agricultural Regulatory Fund law.

- (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;

Tenn. Code Ann. §43-1-701, et seq. requires the commissioner of agriculture to establish by rule fees for the proper administration of the Tennessee Seed Law of 1986, the Tennessee Commercial Fertilizer Law of 1969, the Tennessee Agricultural Liming Materials Act, the Tennessee Commercial Feed Law of 1972, and the costs of the department. See Tenn. Code Ann. §§ 43-10-118; 43-11-104; 43-11-405; and 44-6-104.

- (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;

Agricultural and vegetable seed sellers, agricultural lime manufacturers, commercial fertilizer registrants, and commercial feed manufacturers and distributors are most directly affected by this rule. No 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;

No material opinions or judicial rulings related to this rule have been found.

- (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 are expected to generate an additional \$227,022 of revenue to the Agricultural Regulatory Fund. The additional revenue will cover approximately 99% of the cost of providing agricultural inputs inspection services by the department, up from 81% 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, and Dan Danielson, Agricultural Inputs 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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