

**Department of State
Division of Publications**

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Sequence Number: 03-19-16
Rule ID(s): 6158
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
0080-03-08	Dairy Licensure
Rule Number	Rule Title
0080-03-08-.01	Dairy Manufacturers
0080-03-08-.02	Frozen Dessert Manufacturers
0080-03-08-.03	Distributors
0080-03-08-.04	Samplers and Testers

Chapter 0080-03-08
Dairy Licensure

0080-03-08-.01 Dairy Manufacturers

For purposes of this rule, definitions of “milk” and “cream” as defined under 0080-03-02-.01 shall apply.

- (1) Plants receiving fluid milk or cream. Every dairy products plant or trade products plant that receives primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's period of operation and combined weight of milk and cream received during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of milk and cream received and plant operated less than six months: Tier 5 fee.
 - (b) Up to 10,000 pounds of milk and cream received and plant operated six months or more: Tier 9 fee.
 - (c) 10,001 to 1,000,000 pounds of milk and cream received: Tier 10 fee.
 - (d) 1,000,001 to 30,000,000 pounds of milk and cream received: Tier 11 fee.
 - (e) More than 30,000,000 pounds of milk and cream received: the license fee shall be determined by dividing the total pounds of milk and cream received by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (2) Plants not receiving milk or cream. Every dairy products plant or trade products plant that does not receive primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's output of dairy and trade products during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of product manufactured, processed, or packaged: Tier 5 fee.
 - (b) 10,001 to 1,000,000 pounds of product manufactured, processed, or packaged: Tier 10 fee.
 - (c) 1,000,001 to 30,000,000 pounds of product manufactured, processed, or packaged: Tier 11 fee.
 - (d) More than 30,000,000 pounds of product manufactured, processed, or packaged: the license fee shall be determined by dividing the total pounds of product manufactured, processed, or packaged by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (3) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the plant's expected operating period, milk and cream receipts, and dairy and trade product outputs during the licensure year for which application is made.
- (4) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.02 Frozen Dessert Manufacturers

For purposes of this rule, the definition of "mix" as defined under 0080-03-01-.01 shall apply.

- (1) Every frozen dessert manufacturer shall pay an annual license fee based on the manufacturer's period of operation and volume of mix used during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 5,000 gallons of mix used and manufacturer operated less than six months: Tier 5 fee.
 - (b) Up to 5,000 gallons of mix used and manufacturer operated six months or more: Tier 9 fee.
 - (c) 5,001 to 100,000 gallons of mix used: Tier 10 fee.
 - (d) 100,001 to 1,650,000 gallons of mix used: Tier 11 fee.
 - (e) More than 1,650,000 gallons of mix used: the license fee shall be determined by dividing the volume of mix used by 1,650,000 gallons, and multiplying the dividend by a Tier 11 fee.
- (2) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the manufacturer's expected operating period and mix usage during the licensure year for which application is made.
- (3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.03 Distributors

- (1) The fee for a distributor's license shall be a Tier 1 annual license fee under T.C.A. §43-1-703(f) for each truck the distributor uses in the distribution of dairy products, trade products, or frozen desserts.
- (2) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-106.

0080-03-08-.04 Samplers and Testers

- (1) The fee for a samplers license is a Tier 1 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a sampler employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.
- (2) The fee for a milk testers license is a Tier 2 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a tester employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.

- (3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-105.

* 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 03/07/2016 (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: 03/07/2016

Signature: Julius T. Johnson

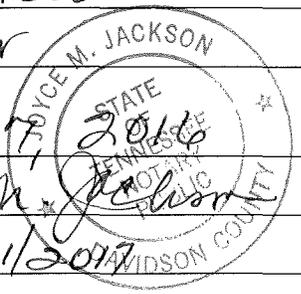
Name of Officer: Julius T. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 7, 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

Department of State Use Only

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SECRETARY OF STATE
PUBLICATIONS

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

Effective on: 6/22/16

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 0080-03-08 Dairy Licensure. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

Comment:

Ms. Beth Farrow and Mr. Eric Goan, on behalf of the Tennessee Dairy Product Association, Mr. John Sanford, on behalf of Dean Foods, and as a member of the Tennessee Dairy Product Association, and others submitted a proposed revision of the rule for the upper limits of dairy and trade products plants licenses and frozen dessert manufacturers.

Response:

The Department appreciates Ms. Farrow's, Mr. Goan's, and Mr. Sanford's concerns and proposal. Upon review, the Department finds the proposal well-suited for both the upper limits of dairy license fees and more even gradation of license fees among firms in the dairy industry. For this reason, the fee increases as proposed have been inserted in this rule.

The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

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 dairy product and trade product plants, frozen dessert manufacturers, milk samplers and testers, and dairy product and trade product distributors.

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

Approximately 28 dairy and trade product plants and frozen dessert manufacturers, 199 milk samplers, 33 milk testers, and 50 distributors 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 adjust license fees in an effort to increase cost recovery associated with dairy inspection in this state and 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.

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

While dairy inspection requirements among states are greatly similar, states differ with regard to how dairy programs are funded.

- (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 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 amends fee schedules for licenses issued under the department of agriculture's dairy program pursuant to amendments of Tenn. Code Ann. §§ 43-1-703; 53-3-105; and 53-3-106.

- (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. §53-3-101, et seq.; and §43-1-701, et seq. authorize the department to set license fees for samplers, testers, manufacturers, plants, and distributors licenses as necessary for the proper administration of the Dairy Law of the State of Tennessee and the costs of the department.

- (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;

Dairy product and trade product plants, frozen dessert manufacturers, milk samplers and testers, and dairy product and trade product distributors are most directly affected by this rule. The Tennessee Dairy Product Association and Dean Foods have offered their support for the rule as amended.

- (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 in this state have been found related 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 are expected to generate an additional \$135,777 of revenue to the Agricultural Regulatory Fund. The additional revenue will help cover approximately 20% of the cost of providing dairy inspection services by the department, up from 3% 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 Bill Thompson, Dairy 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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Sequence Number: _____
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Redline Copy of Rule(s) Filing Form

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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
0080-03-08	Dairy Licensure
Rule Number	Rule Title
0080-03-08-.01	Dairy Manufacturers
0080-03-08-.02	Frozen Dessert Manufacturers
0080-03-08-.03	Distributors
0080-03-08-.04	Samplers and Testers

Chapter 0080-03-08
Dairy Licensure

0080-03-08-.01 Dairy Manufacturers

For purposes of this rule, definitions of "milk" and "cream" as defined under 0080-03-02-.01 shall apply.

- (1) Plants receiving fluid milk or cream. Every dairy products plant or trade products plant that receives primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's period of operation and combined weight of milk and cream received during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of milk and cream received and plant operated less than six months: Tier 5 fee.
 - (b) Up to 10,000 pounds of milk and cream received and plant operated six months or more: Tier 9 fee.
 - (c) 10,001 to 1,000,000 pounds of milk and cream received: Tier 10 fee.
 - (d) 1,000,001 to 30,000,000 pounds of milk and cream received: Tier 11 fee.
 - (e) More than 30,000,000 pounds of milk and cream received: the license fee shall be determined by dividing the total pounds of milk and cream received by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (2) Plants not receiving milk or cream. Every dairy products plant or trade products plant that does not receive primarily milk or cream for manufacturing, processing, or packaging of its products shall pay an annual license fee based on the plant's output of dairy and trade products during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 10,000 pounds of product manufactured, processed, or packaged: Tier 5 fee.
 - (b) 10,001 to 1,000,000 pounds of product manufactured, processed, or packaged: Tier 10 fee.
 - (c) 1,000,001 to 30,000,000 pounds of product manufactured, processed, or packaged: Tier 11 fee.
 - (d) More than 30,000,000 pounds of product manufactured, processed, or packaged: the license fee shall be determined by dividing the total pounds of product manufactured, processed, or packaged by 30,000,000 pounds, and multiplying the dividend by a Tier 11 fee.
- (3) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the plant's expected operating period, milk and cream receipts, and dairy and trade product outputs during the licensure year for which application is made.
- (4) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.02 Frozen Dessert Manufacturers

For purposes of this rule, the definition of "mix" as defined under 0080-03-01-.01 shall apply.

- (1) Every frozen dessert manufacturer shall pay an annual license fee based on the manufacturer's period of operation and volume of mix used during the previous licensure year (July 1 – June 30). The fee shall be determined under T.C.A. §43-1-703(f) according to the following schedule.
 - (a) Up to 5,000 gallons of mix used and manufacturer operated less than six months: Tier 5 fee.
 - (b) Up to 5,000 gallons of mix used and manufacturer operated six months or more: Tier 9 fee.
 - (c) 5,001 to 100,000 gallons of mix used: Tier 10 fee.
 - (d) 100,001 to 1,650,000 gallons of mix used: Tier 11 fee.
 - (e) More than 1,650,000 gallons of mix used: the license fee shall be determined by dividing the volume of mix used by 1,650,000 gallons, and multiplying the dividend by a Tier 11 fee.
- (2) For any applicant who was not in business for the full duration of the previous licensure year (July 1 – June 30), the annual license fee shall be determined under the appropriate schedule based on the manufacturer's expected operating period and mix usage during the licensure year for which application is made.
- (3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703, and 53-3-106.

0080-03-08-.03 Distributors

- (1) The fee for a distributor's license shall be a Tier 1 annual license fee under T.C.A. §43-1-703(f) for each truck the distributor uses in the distribution of dairy products, trade products, or frozen desserts.
- (2) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-106.

0080-03-08-.04 Samplers and Testers

- (1) The fee for a samplers license is a Tier 1 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a sampler employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.
- (2) The fee for a milk testers license is a Tier 2 annual fee under T.C.A. §43-1-703(f). However, no license fee shall be required for the license of a tester employed exclusively by a licensed dairy products plant, trade products plant, or frozen dessert manufacturer.

(3) An applicant for licensure under this rule shall remit its application and annual license fee to the department on or before July 1 of each year. Any license issued under this rule shall expire on June 30 following its issuance. If an applicant for renewal fails to pay the annual license 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.

Authority: T.C.A. §§ 4-3-203; 43-1-703; 53-3-105.

* 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 0080-03-08 Dairy Licensure. Oral comments from the hearing and written comments from constituents are summarized below along with the Department's response:

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Response:

The Department appreciates Ms. Farrow's, Mr. Goan's, and Mr. Sanford's concerns and proposal. Upon review, the Department finds the proposal well-suited for both the upper limits of dairy license fees and more even gradation of license fees among firms in the dairy industry. For this reason, the fee increases as proposed have been inserted in this rule.

The Department always strives to conduct rule review and amendment with an open dialogue with the public stakeholders affected by the rule. The Department appreciates the time and energy these people and the persons they represent have spent in voicing their concerns and suggestions to the Department in a manner aimed at constructive resolution of public needs.

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- (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 dairy product and trade product plants, frozen dessert manufacturers, milk samplers and testers, and dairy product and trade product distributors.

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

Approximately 28 dairy and trade product plants and frozen dessert manufacturers, 199 milk samplers, 33 milk testers, and 50 distributors 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 adjust license fees in an effort to increase cost recovery associated with dairy inspection in this state and 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.

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

While dairy inspection requirements among states are greatly similar, states differ with regard to how dairy programs are funded.

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

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Additional Information Required by Joint Government Operations Committee

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

This rule amends fee schedules for licenses issued under the department of agriculture's dairy program pursuant to amendments of Tenn. Code Ann. §§ 43-1-703; 53-3-105; and 53-3-106.

- (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. §53-3-101, et seq.; and §43-1-701, et seq. authorize the department to set license fees for samplers, testers, manufacturers, plants, and distributors licenses as necessary for the proper administration of the Dairy Law of the State of Tennessee and the costs of the department.

- (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;

Dairy product and trade product plants, frozen dessert manufacturers, milk samplers and testers, and dairy product and trade product distributors are most directly affected by this rule. The Tennessee Dairy Product Association and Dean Foods have offered their support for the rule as amended.

- (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 in this state have been found related 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 are expected to generate an additional \$135,777 of revenue to the Agricultural Regulatory Fund. The additional revenue will help cover approximately 20% of the cost of providing dairy inspection services by the department, up from 3% 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 Bill Thompson, Dairy 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.

