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312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

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Sequence Number: 05-21-13  
Rule ID(s): 5485-5486  
File Date: 5/31/13  
Effective Date: 10/29/13

# Proposed Rule(s) Filing Form

*Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Agriculture
<b>Division:</b>	Regulatory Services
<b>Contact Person:</b>	K. David Waddell
<b>Address:</b>	P.O. Box 40627
<b>Zip:</b>	37204
<b>Phone:</b>	615-837-5331
<b>Email:</b>	david.waddell@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
0080-03-05	Regulations for the Enforcement of Milk
0080-03-06	Regulations for the Enforcement of Ice Cream

Chapter 0080-03-05  
Regulations for the Enforcement of Milk

Repeal

Chapter 0080-03-05 Regulations for the Enforcement of Milk is hereby repealed by deleting the chapter in its entirety.

Authority: T.C.A. § 53-3-203(d)(1).

Chapter 0080-03-06  
Regulations for the Enforcement of Ice Cream

Repeal

Chapter 0080-03-06 Regulations for the Enforcement of Ice Cream is hereby repealed by deleting the chapter in its entirety.

Authority: T.C.A. § 53-3-203(d)(1).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of a proposed rule(s), lawfully promulgated and adopted.

Date: March 11, 2013

Signature: *Julius Johnson*

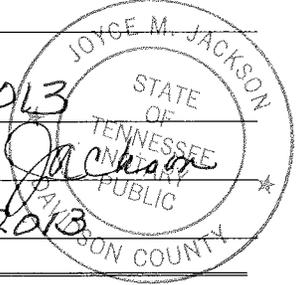
Name of Officer: Julius Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: March 11, 2013

Notary Public Signature: *Joyce M. Jackson*

My commission expires on: 09/08/2013



All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*Robert E. Cooper, Jr.*  
Robert E. Cooper, Jr.  
Attorney General and Reporter

5-29-13  
Date

**Department of State Use Only**

Filed with the Department of State on: 5/31/13

Effective on: 10/29/13

*Tre Hargett*  
Tre Hargett  
Secretary of State

RECEIVED  
2013 MAY 31 AM 10:04  
SECRETARY OF STATE

## 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:

Producers, distributors and retailers of milk and ice cream are subject to the proposed amendment. Small businesses will not bear any cost or realize any benefit from the proposed amendment.

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

Producers, distributors and retailers of milk and ice cream are subject to the proposed amendment. There are over 13,000 producers, distributors and retailers of milk and ice cream. However, the department does not keep records on what percent qualify as small businesses.

- (3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There will be less reporting, recordkeeping and other administrative costs with the repeal of these rules.

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

The proposed repeal would not affect small businesses and consumers.

- (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:

The repeal these chapters will make the rules of the department less burdensome and intrusive.

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

There is no federal counterpart.

- (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.

All business will be relieved of the requirements of these chapters.

## 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)

If adopted, these rules will not have any impact on the expenditures or revenue of local governments.

**Additional Information Required by Joint Government Operations Committee**

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

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

The proposed repeal of these chapters will remove antiquated and irrelevant rules. Amendments to T.C.A. §§ 53-3-201 et seq. made these chapters unnecessary.

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

There is no federal law or regulation that mandates promulgation of these rules. The predecessor to T.C.A. §§ 53-3-201 et seq. authorized the adoption of these rules.

- (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;

Producers, distributors and retails of milk and ice cream would be most directly affected if the repeal of these rules were approved. Such groups would not oppose repeal of these rules.

- (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 and reporter opinions or judicial rulings directly relating to these rules.

- (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;

There will be no increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule.

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

K. David Waddell, Tennessee Department of Agriculture, Division of Regulatory Services, Legal Counsel

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

K. David Waddell, Tennessee Department of Agriculture, Division of Regulatory Services, Legal Counsel

- (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

Tennessee Department of Agriculture, Ellington Agricultural Center, P.O. Box 40627, Nashville, TN 37204. Office number: 615-837-5331, david.waddell@tn.gov

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

**RULES  
OF  
TENNESSEE DEPARTMENT OF AGRICULTURE  
CHAPTER 0080-3-5  
REGULATIONS FOR THE ENFORCEMENT OF MILK**

**TABLE OF CONTENTS**

0080-3-5-.01 Records \_\_\_\_\_ 0080-3-5-.03 General Provisions  
0080-3-5-.02 Price Filing Requirements

**0080-3-5-.01 RECORDS**

(1) \_\_\_\_\_

(a) \_\_\_\_\_ All distributors and retailers of milk and milk products as defined in Section 52-331, T.C.A., shall keep for ninety (90) days invoices showing the following:

1. Date of delivery

2. Products delivered (including the number and size of units delivered)

3. The price of products delivered

4. Type of service rendered when other than standard service.

(b) \_\_\_\_\_ The aforementioned shall be kept for inspection by the Commissioner of Agriculture or his duly authorized representative in order for him to determine whether or not said distributors and retailers are in compliance with the provisions of Sections 52-331 through 52-334 T.C.A.

(2) \_\_\_\_\_ All distributors, processors, retailers, and/or their affiliated corporations shall keep for the inspection of the Commissioner of Agriculture or his duly authorized representative, bills of sale, purchase contract, or lease agreements of all equipment used for storing, transporting or selling milk or milk products.

(3) \_\_\_\_\_ All processors and distributors shall maintain cost records of their operation during the preceding three (3) months to be used as a basis for determining whether or not said processor or distributor is selling or offering to sell milk below cost. Such records shall contain, but not limited to, invoices, cost of materials, salaries, any rebates or discounts, lease agreements, purchase contracts, depreciation of equipment, any computations made for tax purposes either federal or local.

*Authority: T.C.A. §52-333(B)(2). Administrative History: Original Rule filed April 14, 1975; effective May 14, 1975.*

## ~~0080-3-5-.02 PRICE FILING REQUIREMENTS~~

- (1) — All processors or distributors offering for sale or selling milk or milk products in private label cartons for a specific customer or group of customers shall file a separate price schedule for such private label products with the Commissioner of Agriculture on a form furnished by said Commissioner. Said price schedule shall be filed in accordance with Section 52-331(2)(c) T.C.A., and all regulations promulgated under Section 52-333(B)(2) T.C.A.
- (2) — All processors and distributors offering for sale or selling milk or milk products on a store door or store platform service and/or a plant dock service as defined in Sections 52-331(l)(k) and (1) T.C.A. shall file with the Commissioner of Agriculture a list of all customers receiving such type services and of all changes in and amendments thereto made from time to time within forty-eight (48) hours after said change or amendment. Where the customer has no front or rear receiving platform or porch, then it will be permissible to place the milk and milk products inside the store door, but in no case at a distance further than six (6) feet from said door.
- (3) — Whenever any processor or distributor amends any price schedule theretofore filed with the Commissioner of Agriculture for any reason whatsoever, such processor or distributor shall file a full and complete schedule of all current prices for the market area affected, including prices then on file and not changed by such amendment.
  - (a) — All processors or distributors who meet, or have met, in good faith, a lawful competitive price or a lawful competitive condition relating to milk or milk products, shall notify the Commissioner of Agriculture by certified mail of his action within twenty-four (24) hours after said action is effective. Such notification shall include a statement containing the following information:
    1. — The name and address of the retailer involved, or the affected area;
    2. — All prices, terms and conditions extended in meeting the competition;
    3. — The name and address of the processor and/or distributor whose price or condition is being met, and the effective date of such price or condition.
  - (b) — A processor or distributor who has met, in good faith, a lawful competitive price or condition relating to milk or milk products, shall retain in his files for a period of one year information and/or statements detailing the circumstances surrounding all competitive situations which he has met.
- (4) — All retailers of milk and milk products who purchase the same in packages ready to be sold to the consumer from a point outside the State for resale in this State shall file with the Commissioner of Agriculture, State of Tennessee, a list of prices paid for such milk or milk products and the type service received at least ten (10) days before bringing such

milk or milk products into this State for resale, and said retailer shall thereafter advise the Commissioner of any changes in or amendments thereto as required of processors and/or distributors in Section 52-331(2)(c) T.C.A.

- (5) — All processors and distributors in completing their price filing forms as required by section 52-331(2)(c) T.C.A. will in the portion relating to sales area designate their respective sales area by county, and if a portion of a county, then the town and community affected in that county.

*Authority:* T.C.A. §52-333(B)(2).

### **~~0080-3-5-.03 GENERAL PROVISIONS~~**

- (1) — All retailers shall calculate to the nearest whole cent the price of each unit of sale and all one-half cents shall be considered to be the next highest whole cent.
- (2) — All other regulations previously issued by the Commissioner of Agriculture for the enforcement of Sections 52-331 through 52-334 T.C.A., and promulgated in accordance with Section 4-501, T.C.A., et seq., are by these regulations repealed.

*Authority:* T.C.A. §52-333(B)(2).

**RULES  
OF  
TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-3-6  
REGULATIONS FOR THE ENFORCEMENT OF ICE CREAM**

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0080-3-6-.01 Records  
0080-3-6-.02 Price Filing Requirements  
0080-3-6-.03 General Provisions

**0080-3-6-.01 RECORDS**

(1)

(a) ~~All distributors and retailers of frozen desserts as defined in Section 52-335 T.C.A., shall keep for ninety (90) days invoices showing the following:~~

- ~~1. date of delivery~~
- ~~2. products delivered (including the number and size of units delivered)~~
- ~~3. the price of products delivered~~
- ~~4. types of service rendered when other than standard service.~~

(b) ~~The aforementioned shall be kept for the inspection by the Commissioner of Agriculture or his duly authorized representative in order for him to determine whether or not said distributors and retailers are in compliance with the provisions of T.C.A. 52-335 through T.C.A. 52-341.~~

(2) ~~All distributors, processors, retailers, and/or their affiliated corporations shall keep for the inspection of the Commissioner of Agriculture or his duly authorized representative, bills of sale, purchase contract, or lease agreements of all equipment used for storing, transporting or selling frozen desserts.~~

(3) ~~All processors and distributors shall maintain cost records of their operation during the preceding year (either calendar or fiscal year) to be used as a basis for determining whether or not said processor or distributor is selling or offering to sell frozen desserts below cost. Such records shall contain, but not limited to, invoices, cost of materials, salaries, any rebates or discounts, lease agreements, purchase contracts, depreciation of equipment, any computations made for tax purposes either federal or local.~~

*Authority: T.C.A. Section 52-341(B).*

**0080-3-6-.02 PRICE FILING REQUIREMENTS.**

- (1) All processors or distributors offering for sale or selling frozen desserts in private label cartons for a specific customer or group of customers shall file a separate price schedule for such private label products with the Commissioner of Agriculture on a form furnished by said Commissioner. Said price schedule shall be filed in accordance with Section 52-335(e)(3) T.C.A., and all regulations promulgated under Section 52-341(B)(2) T.C.A.
- (2) All processors and distributors offering for sale or selling frozen desserts on a store door or store platform service and/or a plant dock service as defined in Sections 52-335(b)(9) and (10), shall file with the Commissioner of Agriculture a list of all customers receiving such type services and of all changes in and amendments thereto made from time to time within forty eight (48) hours after said change or amendment.
- (3) Whenever any processor or distributor amends any price schedule theretofore filed with the Commissioner of Agriculture for any reason whatsoever, such processor or distributor shall file a full and complete schedule of all current prices for the market area affected, including prices then on file and not changed by such amendment.
  - (a) All processors or distributors who meet, or have met, in good faith, a lawful competitive price or a lawful competitive condition relating to frozen desserts, shall notify the Commissioner of Agriculture by certified mail of his action within twenty four (24) hours after said action is effective. Such notification shall include a statement containing the following information:
    1. the name and address of the retailer involved;
    2. all prices, terms and conditions extended in meeting the competition;
    3. the name and address of the processor and/or distributor whose price or condition is being met, and the effective date of such price or condition.
  - (b) A processor or distributor who has met, in good faith, a lawful competitive price or condition relating to frozen desserts, shall retain in his files for a period of one year information and/or statements detailing the circumstances surrounding all competitive situations which he has met.
- (4) All retailers of frozen desserts who purchase the same in packages ready to be sold to the consumer from a point outside the State for resale in this State shall file with the Commissioner of Agriculture, State of Tennessee, a list of prices paid for such frozen desserts and the type service received at least ten (10) days before bringing such frozen desserts into this State for resale, and said retailer shall thereafter advise the Commissioner of any changes in or amendments thereto as required of processors and/or distributors in Section 52-335(e)(3).

- (5) — ~~All processors and distributors in completing their price filing forms as required by Section 52-335(e)(3) T.C.A., will in the portion relating to sales area designate their respective sales areas by county, and if a portion of a county, then the town or community affected in that county.~~

*Authority: T.C.A. Section 52-341(B).*

### **0080-3-6-.03 GENERAL PROVISIONS**

- (1) — ~~All retailers shall calculate to the nearest whole cent the price of each unit of sale and all one half cents shall be considered to be the next highest whole cent.~~
- (2) — ~~All other regulations previously issued by the Commissioner of Agriculture for the enforcement of Sections 52-335 through 52-341 T.C.A., and promulgated in accordance with Section 4-501 T.C.A., et seq., are by these regulations repealed.~~

*Authority: T.C.A. Section 52-341(B).*