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Sequence Number: 09-07-15
 Notice ID(s): 2372-2378
 File Date: 9/4/15

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee 37204
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Liz Sneed
Address:	Post Office Box 40627, Nashville, Tennessee 37204
Phone:	(615) 837-5116
Email:	liz.sneed@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Ed Jones Auditorium, Ellington Agricultural Center		
Address 2:	416 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date :	October 30, 2015		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

This rule is intended to create a new division heading for the Tennessee Department of Agriculture's rules. The new heading will be 0080-08 Weights and Measures. In effect, this rule will move rules for the Weights and Measures program from their current location in 0080-05 Division of Markets; will amend those rules to clarify language; and will move those rules to the new Weights and Measures heading. Promulgation of these rules is also intended to create a new fee and licensing structure for the Weights and Measures program pursuant to amendment of Tenn. Code Ann. §§ 43-1-703; 47-26-806; 47-26-909; 47-26-1008; and 47-26-1110.

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Chapter Number	Chapter Title
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0080-05-01	Packaging and Labeling
Rule Number	Rule Title

Chapter Number	Chapter Title
0080-05-08	Certified Public Weighers
Rule Number	Rule Title
0080-05-08-.01	Contents of Record Shipment
0080-05-08-.02	Maintenance of Records

Chapter Number	Chapter Title
0080-05-09	Method of Sale of Commodities
Rule Number	Rule Title

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

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

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

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

Repeal

Chapter 0080-05-01
Packaging and Labeling

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

Repeal

Chapter 0080-05-08
Certified Public Weighers

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

Repeal

Chapter 0080-05-09
Method of Sale of Commodities

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

New

Chapter 0080-08-01
Sales and Fees

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

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

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

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

Annual fee requirements for commercial weighing and measuring equipment in the state are as follows:

(1) Liquid measuring equipment.

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

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

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

1. 1 – 6 dispensers: Tier 3 fee;
 2. More than 6 dispensers: Tier 6 fee.
- (c) Liquefied Products. Liquefied products refer to liquid measuring equipment kept or used for measuring the following liquids sold at retail.
1. Liquefied Petroleum Gas Measuring Equipment: Tier 3 fee per meter;
 2. Liquefied Natural Gas Measuring Equipment: Tier 6 fee per meter.
- (d) Bulk Meters. The following fees apply to liquid measuring equipment kept or used for measuring liquids sold in non-retail transactions and liquid measuring meters mounted on vehicles.
1. Liquefied Petroleum Gas Bulk Meter: Tier 3 fee per meter;
 2. Mass Flow Meter: Tier 11 fee per meter;
 3. Vehicle Tank Meter: Tier 3 fee per meter;
 4. Liquid Measuring Equipment – Wholesale, ≤ 100 gallons/minute: Tier 3 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate less than or equal to 100 gallons per minute, or the metric equivalent;
 5. Liquid Measuring Equipment – Wholesale, > 100 gallons/minute: Tier 4 fee per meter. Fees under this part apply to equipment rated by its manufacturer as capable of measuring volumes dispensed at a rate greater than 100 gallons per minute, or the metric equivalent.
- (2) Gaseous material measuring equipment. The following fees apply to devices kept or used for measuring gaseous materials sold in retail or non-retail transactions.
- Compressed Natural Gas Measuring Equipment: Tier 6 fee per meter.
- (3) Scales. The following fees are payable based on the number of scales used or kept in commerce.
- (a) Small Scales. Small scales mean weighing equipment rated by its manufacturer as capable of weighing less than 2,500 pounds, or the metric equivalent.
1. 1 – 5 scales: Tier 1 fee;
 2. 6 – 20 scales: Tier 4 fee;
 3. More than 20 scales: Tier 6 fee.
- (b) Large Scales. Large scales mean weighing equipment rated by its manufacturer as capable of weighing 2,500 pounds or more, or the metric equivalent.
1. 1 – 2 scales: Tier 4 fee;
 2. More than 2 scales: Tier 6 fee.

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

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

New

Chapter 0080-08-02
Certified Public Weigher Regulations

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

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a Certified Public Weigher license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) Applicants for licensure shall include with their application proof of bond in the amount of \$25,000, with surety by a corporate bonding company authorized to do business in this state. The bond shall be payable in the event the applicant fails to fulfill his responsibilities in accordance with the Certified Public Weigher Law of 1981 or its regulations. The bond shall be non-cancellable for the period of the license.
- (5) Applicants for licensure under this chapter shall submit their application, biennial license fee, and proof of bond to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the license fee by the following July 15, a late charge shall be assessed under T.C.A. §43-1-703.
- (6) The department may deny any application for issuance or renewal of any license that is not completed in accordance with this rule.

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

0080-08-02-.02 Record of Shipment

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

included in the listing, the certified public weigher shall record license number and the number of axles on the truck; and

- (b) A copy of each record of shipment prepared by the certified public weigher within the previous 12 months.

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

New

Chapter 0080-08-03
Public Weighmaster Regulations

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

- (1) Application for issuance of any license under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:
 - (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address; and
 - (c) Proof of qualifications for a Public Weighmaster license.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
- (3) The fee for a Public Weighmaster license is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
- (4) Applicants for licensure under this chapter shall submit their application and biennial license fee to the department on or before July 1 of the licensure period. Any license issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the license fee by the following July 15, a late charge shall be assessed under T.C.A. §43-1-703.
- (5) The department may deny any application for issuance or renewal of any license that is not completed in accordance with this rule.

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

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

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

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

New

Chapter 0080-08-04
Serviceperson Regulations

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

- (1) Application for registration as a serviceperson under this chapter shall be made on forms provided by the department, which shall be completed in full and shall include:

- (a) Name of the applicant;
 - (b) Contact information for applicant, to include telephone number, email address, employer, if any, and employer's telephone number and address;
 - (c) Proof of the applicant's registration in its state of incorporation or business license registration with the Tennessee Department of Revenue, if applicable;
 - (d) Name and address of applicant's registered agent for service of process, if any.
 - (e) Certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which applicant's competence is being registered;
 - (f) Certification by the applicant that the individual or agency has in possession or available for use, and shall use, all necessary testing equipment and standards, and proof that such testing equipment and standards have been certified by the department or by another state weights and measures laboratory that can show current traceability to the National Institute of Standards and Technology;
 - (g) Certification by the applicant that the individual or agency has full knowledge of all appropriate weights and measures laws, orders, rules, and regulations, and has a copy of the most recent edition of the National Institute of Standards and Technology (NIST) Handbook 44, or any subsequent document that replaces it; and
 - (h) Proof of qualifications for a Serviceperson registration.
- (2) Licensees shall notify the department in writing of any changes to the information or contents of an application within 30 days after the change takes place.
 - (3) The fee for a Serviceperson registration is a Tier 2 biennial fee under T.C.A. §43-1-703(f).
 - (4) Applicants for registration under this chapter shall submit their application and biennial registration fee to the department on or before July 1 of the registration period. Any registration issued under this chapter shall expire on June 30, 24 months following its issuance. If an applicant for renewal fails to pay the registration fee by the following July 15, a late charge shall be assessed under T.C.A. §43-1-703.
 - (5) The department may deny any application for issuance or renewal of any registration that is not completed in accordance with this rule.

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

0080-08-03-.04 Notice of Enforcement Action Against Registrant

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

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

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: September 3, 2015

Signature: *Julius G. Johnson*

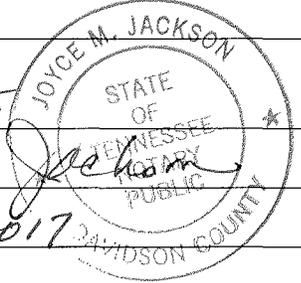
Name of Officer: Julius G. Johnson

Title of Officer: Commissioner

Subscribed and sworn to before me on: 09/03/15

Notary Public Signature: *Joyce M. Jackson*

My commission expires on: 09/11/2017



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Filed with the Department of State on: 9/4/15

Tre Hargett

Tre Hargett
Secretary of State

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