

Department of State

Division of Publications

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower

Nashville, TN 37243

Phone: 615-741-2650

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For Department of State Use Only

Sequence Number: 06-21-23

Rule ID(s): 9888

File Date: 6/13/2023

Effective Date: 9/11/2023

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: Tennessee Department of Agriculture

Division: Consumer and Industry Services

Contact Person: Jay Miller

Address: 436 Hogan Road, Nashville, TN

Zip: 37220

Phone: 615-837-8150

Email: Jay.Miller@tn.gov

Revision Type (check all that apply):

☐ Amendment

☒ New

☐ Repeal

☐ Content based on previous emergency rule filed on _____

☐ Content is identical to the emergency rule

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0080-05-16	Agricultural Pesticides
Rule Number	Rule Title
0080-05-16- 01	Dicamba

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

New

Rule Number 0080-05-16-.01 Dicamba is added as a new rule and shall read:

CHAPTER 0080-05-16
AGRICULTURAL PESTICIDES

0080-05-16-.01 DICAMBA.

- (1) Dicamba is any pesticide containing 3, 6-Dichloro-2-methoxybenzoic acid or 3, 6- Dichloro-o-anisic acid.
- (2) If a pesticide is labeled to have a dicamba concentration of at least 6.5% weigh/weight and is not labeled for over-the-top use, a person shall not apply the pesticide between May 15 and October 1 of the same year for production of cotton or soybeans, including for pre-plant purposes.
- (3) Violations.
 - (a) Where dicamba of any concentration is applied in violation of the Act, its corresponding regulations, or this rule, each acre of the application shall be a separate violation.
 - (b) A person is responsible for violations when committed by either the person or his agent.
 - (c) Each violation is grounds for denial or revocation of any pesticide certificate, license, or charter issued by the department; actions for injunction; and assessment of civil penalties.

Authority: T.C.A. §§ 4-3-203 and 62-21-118.

* 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 on 10/25/2022, 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: 04/28/2022

Rulemaking Hearing(s) Conducted on: (add more dates). 06/23/2022

Date: 5/1/2023

Signature: [Signature]

Name of Officer: Commissioner Charlie Hatcher

Title of Officer: Commissioner

Agency/Board/Commission: Tennessee Department of Agriculture

Rule Chapter Number(s): 0080-05-16

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.

[Signature]
Jonathan Skrmetti
Attorney General and Reporter

6-8-23

Date

Department of State Use Only

Filed with the Department of State on: 6/13/2023

Effective on: 9/11/2023

RECEIVED

Jun 13 2023, 10:57 am

Secretary of State
Division of Publications

[Signature]

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

The Department of Agriculture held a public hearing on June 23, 2022. Jay Miller served as hearing officer for the Rulemaking Hearing concerning 0080-05-16-.01 Dicamba. No questions or comments on the rule were presented from the public during the hearing.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

- (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:

Pesticide applicators who serve producers of cotton and soybeans will be subject to this proposed rule. The Department anticipates these applicators will not bear additional costs or benefits associated with the rule.
- (2) Identification and estimate of the number of small businesses subject to the proposed rule:

There are approximately 7,000 private applicators and 272 commercial applicators in Tennessee. However, not all private or commercial applicators use dicamba products.
- (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:

The rule does not change recordkeeping or other administrative costs already associated with application of pesticides.
- (4) Statement of the probable effect on impacted small businesses and consumers:

Impacted small businesses and consumers will limit generic dicamba use to non-restricted times of the year either by using restricted dicamba products only before May 15 or after October 1, or by using non-restricted products throughout the year. Given the accessibility to continue use of generic dicamba and wide availability of other alternative products, the Department anticipates effects of this rule to be minimal on small businesses and consumers, while also protecting against vaporization of generic dicamba during hot weather months.
- (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 rule is tailored in the least burdensome manner possible to small business.
- (6) Comparison of the proposed rule with any federal or state counterparts:

These rules are consistent with the federal Environmental Protection Agency (EPA) approved label for this product and the EPA's recommended use of the product. The rule is consistent with the Department's authority under Tenn. Code Ann. § 62-21-118.
- (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:

The rule is tailored in the least burdensome manner possible, and further exemption from the rule may undo its intended protection against vaporization of generic dicamba products during hot weather months.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

The rule is not expected to have financial impact 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 proposed rule is being promulgated to reinstitute annual restrictions on application of generic dicamba products to cotton or soybeans from May 15 to October 1. Tennessee had a similar rule in place from 2018 until 2021 when it was repealed as part of a larger rulemaking package for pesticides programs at the Department.

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

T.C.A. § 62-21-101, et seq. regulates the application of pesticides in Tennessee.

- (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;

Private applicators and cotton and soybean producers are most directly affected by this proposed rule.

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

Terminix Intern. Co., LP v. Tennessee Dept. of Labor, 77 S.W.3d 185 (Tenn. Ct. App. 2001) (State jurisdiction to regulate sale or use of pesticides is not preempted by federal authority). No other state law opinions, attorney general opinions, or sixth circuit opinions have been identified.

- (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;

No increase or decrease in government revenues are expected.

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

Mark Powell, Agriculture Inputs Administrator; Jay Miller, General Counsel

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

Mark Powell, Agriculture Inputs Administrator; Jay Miller, General 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

Mark Powell, PO Box 40627, Nashville, TN 37204; (615) 837-5135; mark.powell@tn.gov
Jay Miller, PO Box 40627, Nashville, TN 37204; (615) 837-5341; jay.miller@tn.gov

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

None.

**RULES
OF THE
TENNESSEE DEPARTMENT OF AGRICULTURE**

**CHAPTER 0080-05-16
AGRICULTURAL PESTICIDES**

0080-05-16-.01 DICAMBA.

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Authority: T.C.A. §§ 4-3-203 and 62-21-118.

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Sequence Number: 08-12-23
Rule ID(s): N/A
File Date: 8/16/2023
Effective Date: 8/16/2023

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Consumer and Industry Services
Contact Person:	Jay Miller
Address:	436 Hogan Road, Nashville, TN
Zip:	37220
Phone:	615-837-8150
Email:	Jay.Miller@tn.gov

Type of Action on Rule:

☐ **Stay of Effective Date of Rules**

Rule Filing Date: (mm/dd/yyyy)
Rule Original Effective Date: (mm/dd/yyyy)
Length of Stay (not to exceed 75 days): _____
New Effective Date of Rule Filing: (mm/dd/yyyy)

☐ **Notice of Withdrawal of Stay**

Stay Filing Date: (mm/dd/yyyy)
Stay Effective Date: (mm/dd/yyyy)
New Effective Date of Rule Filing: (mm/dd/yyyy)

☒ **Notice of Withdrawal of Rules**

Rule Filing Date: June 13, 2023
Rule Effective Date: September 11, 2023

Rule(s) (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
0080-05-16	Agricultural Pesticides
Rule Number	Rule Title
0080-05-16-.01	Dicamba

Date: August 16, 2023

Signature: Charlie Hatcher

Digitally signed by Charlie Hatcher
DN: cn=Charlie Hatcher, o=Tennessee Department of Agriculture,
ou=Commissioners, email=charlie.hatcher@ag.tn.gov, c=US
Date: 2023.08.16 15:56:21 -05'00'

Name of Officer: Commissioner Charlie Hatcher

Title of Officer: Commissioner, Tennessee Department of Agriculture

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Filed with the Department of State on: 8/16/2023



Tre Hargett
Secretary of State

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Aug 16 2023, 4:12 pm

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