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).

<table>
<thead>
<tr>
<th>Agency/Board/Commission:</th>
<th>Department of Agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division:</td>
<td>Consumer and Industry Services</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>David Waddell</td>
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<td>440 Hogan Road, Nashville, TN</td>
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</tr>
</tbody>
</table>

Revision Type (check all that apply):
X    Amendment
____  New
____  Repeal

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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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)

<table>
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Chapter 0080-06-28 Industrial Hemp is amended by re-titling the chapter “Hemp”.

Authority:  T.C.A. §§ 4-3-203 and 43-7-104.

Rule 0080-06-28-.01 Scope is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.01 Scope.

(1) This chapter applies to any person who grows or possesses rooted hemp.

(2) Persons licensed under this chapter shall be responsible for operations conducted under their license until either the applicable license expires, or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license issued under this chapter.

(3) Licenses issued under this chapter are not transferable from person to person or location to location.

Authority:  T.C.A. §§ 4-3-203 and 43-7-104.

Rule 0080-06-28-.02 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.02 Definitions.

(1) Terms in this chapter share those meanings of terms set forth in T.C.A. § 43-27-101 et seq.

(2) When used in this chapter, unless the context requires otherwise:

(a) Act means T.C.A. § 43-27-101 et seq.;

(b) Acceptable hemp THC level means that when a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content level on a dry weight basis produces a distribution or range that includes 0.3% or less.

(c) Cannabis plant means any plant or any part of a plant of the genera Cannabis and includes hemp;

(d) Grow means to cultivate plants with attached roots;

(e) Growing area means any contiguous land area licensed for the growth of hemp. Bifurcation of a growing area by roads, fencing, or the like shall not render the area non-contiguous under this definition;

(f) Hemp producer means a person that produces hemp for harvest;

(g) Hemp broker means a person that purchases and sells hemp plants grown by others;

(h) Hemp propagator means a person that produces clones or seedlings for retail sale;

(i) Key participants mean a sole proprietor, a partner in a partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons
such as a chief executive officer, chief operating officer, and chief financial officer. The definition does not include non-executive managers such as farm, field, or shift managers.

(j) Move, distribute, transport, or similar words mean to relocate in any manner an item from one real property to another;

(k) Person means an individual, partnership, corporation, or any other form of legal entity;

(l) Sample means to take material, or the material taken from a location licensed by the department;

(m) Stop movement order means a written directive issued by the department to prohibit or limit the movement of plants or plant parts;

(n) THC means delta-9 tetrahydrocannabinol; and,

(o) USDA means United States Department of Agriculture.

Authority:  T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.03 License Application and Fees is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.03 License Application and Fees.

(1) A hemp license is required to possess rooted hemp and is issued to each person for each physical address where the person grows or possesses rooted hemp.

(2) Application for a license shall be made on forms provided by the department, which shall be completed in full and shall include:

(a) Name of applicant;

(b) Date of birth of any applicant who is an individual or a partner in a general partnership;

(c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:

1. Applicant’s registration in its state of incorporation; or,

2. Applicant’s business license issued by a local governmental authority;

(d) Contact information for applicant, to include name of the key participant, telephone number, email address, and address of the principal place of business;

(e) Address of the location to be licensed for growth of hemp and description of all growing areas at the location, including total number of growing acres and Global Positioning System (GPS) coordinates from the areas’ central most points; and

(f) Other information as required by the department.

(3) Licensees shall notify the department of any changes to contact information of an application within 30 days after the change takes place.

(4) The annual fee for a hemp producer license is assessed under T.C.A. §43-1-703(f) and is determined according to the total size of growing area(s) at the licensed address:

(a) Less than 5 acres: Tier 6 fee;
(b) 5 acres to 20 acres: Tier 7 fee;
(c) More than 20 acres: Tier 8 fee.

(5) The annual fee for a hemp broker license is assessed under T.C.A. §43-1-703(f) and is a Tier 7 fee.

(6) The annual fee for a hemp propagator license is assessed under T.C.A. §43-1-703(f) and is a Tier 7 fee.

(7) The annual fee for any combination of a hemp producer, broker, or propagator license is a single fee equal to the highest amount of the license for which the applicant requests.

(8) License applicants shall submit an application and license fee to the department on or before October 1 of each year. The annual license fee shall be waived for any institute of higher education that offers programs of study in agricultural sciences seeking licensure for a growing area on university property. Licenses expire on September 30 following their issuance. If an applicant for renewal fails to submit payment of the license fee on or before the following October 16, the applicant shall also be required to pay a late charge assessed under T.C.A. §43-1-703 prior to renewal of the license.

(9) The department may deny any application for licensure that is not completed in accordance with this rule.

(10) Any person who materially falsifies any information in their application shall be ineligible to participate in the program.

Authority:  T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.04 Acquisition of Seed and Propagules is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.04 USDA Reports.

(1) The department shall collect, maintain, and report to USDA on a timely basis:
   (a) The contact information for each licensed producer;
   (b) A description of the land on which the producer will produce hemp; and
   (c) The status and the license number;

(2) The department shall notify USDA of any change to the license information within 30 days of the department becoming aware of the change.

(3) All producers shall report hemp crop acreage to the USDA Farm Service Agency within 30 days of obtaining a license and shall provide the following information:
   (a) Street address and the GPS location of the lot, greenhouse, building, or site hemp will be grown.
   (b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.
   (c) The hemp license number.

Authority:  T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.05 Crop Distribution, Destruction, and Return is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.05 Crop Distribution.

Distribution. Licensees shall not distribute rooted hemp to an unlicensed person. Any person may possess, distribute, or store non-rooted hemp.
Authority: T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.06 Movement Permits is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.06 Movement Permits.

1. Licensees shall not move rooted hemp plants without a valid movement permit issued by the department. Licensees shall not move any hemp to anyone who treats or transforms harvested hemp for distribution in commerce without a valid movement permit issued by the department.

2. Hemp movement permits are required per vehicle per day. To receive a movement permit, the licensee shall submit a movement permit request on forms provided by the department, which may require:
   
   a. The hemp license number for which movement is requested;
   
   b. Origin and destination of movement;
   
   c. Date of intended movement;
   
   d. Weight, volume, or number of units of material to be moved.

3. The department may deny any application for a movement permit that is not completed in accordance with this rule.

4. Each cannabis plant or plant product moved not in conformity with this rule shall constitute a separate violation of this chapter.

Authority: T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.07 Sampling and Inspections is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.07 Sampling and Inspections.

1. The department or a designated representative may enter during normal business hours any location, licensed by the department, for purposes of inspecting any cannabis plant, record, or other material as necessary for the efficient enforcement of the Act and this chapter.

2. Sampling.
   
   a. The department or a designated representative, trained and approved by the department, may conduct sampling of any cannabis plant or other material at a location licensed by the department.
   
   b. A sample collected according to uniform protocols approved by the commissioner shall be deemed representative of the location, growing area, or lot from which the sample was obtained.
   
   c. Within 15 days prior to the anticipated harvest the department shall collect samples from the flower material for THC level testing.
   
   d. During a scheduled sample collection, the producer or an authorized representative shall be present at the growing site.
   
   e. A producer shall not harvest the hemp crop prior to samples being taken.
   
   f. Samples from different lots shall not be comingle.
(3) Testing protocols. The procedure employed by the Tennessee Department of Agriculture defines the preparation and analysis of hemp samples for the quantitative determination of cannabinoids, including delta-9-THC, on a dry weight basis and is conducted in a manner similarly reliable to post-decarboxylation and considers the potential conversion of delta-9 tetrahydrocannabinolic acid (THC-A) in hemp into THC and the test result measures total available THC derived from the sum of THC and THC-A content.

After excluding extraneous material, samples are comminuted to facilitate representative subsampling. Test portions are taken for moisture determination, and cannabinoids are extracted from separate test portions by adding a suitable solvent and subsequent mechanical shaking. The resulting extract is centrifuged and diluted as needed. During instrumental analysis, these prepared sample extracts are separated into their individual components using liquid chromatography prior to detection. Quantitation is accomplished by comparing instrument responses for unknown samples with those for standards of known concentration using a linear regression and measurement of uncertainty that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement. Quality control samples are analyzed alongside unknown samples to demonstrate statistical control of the procedure.

(4) The department and growers may utilize private DEA registered laboratories when appropriate for testing official samples, if the laboratory meets the standards set by USDA for such work including a measurement of uncertainty and the sample is sent directly to the laboratory by the sampler. The department’s laboratory shall serve as the reference laboratory for all samples.

(5) Test results exceeding the acceptable hemp THC level. Any sample test result higher than 0.3% THC concentration on a dry weight basis shall be conclusive evidence that one or more cannabis plants or plant products from the area sampled contain a THC concentration in excess of that allowed under the Act and cannot be further handled, processed, or enter commerce and the licensee shall ensure the lot is disposed of in accordance with a directive from the department, which may include destruction by burning, plowing under, disking, mulching, bush mower, or deep burial.

(6) Appeals. Any licensee aggrieved by an order issued under this chapter may petition the department in writing for review of the order under the Uniform Administrative Procedures Act. If no petition is filed with the department within ten days of the department’s order, the order shall become final and will not be subject to review.

(7) The department shall notify USDA of non-compliant plants and disposal of those plants along with sample results.

(8) Laboratory analysis costs. Licensees shall pay a Tier 4 laboratory analysis fee under T.C.A. §43-1-703(f) for each sample tested by the department.

Authority: T.C.A. §§ 4-3-203 and 43-27-104.

Rule 0080-06-28-.08 Agronomic Reports is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.08 Negligent Violations.

(1) Negligent violations shall include, but not limited to:

   (a) Failure to provide a legal description of land on which the producer produces hemp;

   (b) Failure to obtain a license; and

   (c) Production of cannabis at a THC concentration exceeding the acceptable limits.

(2) Hemp producers do not commit a negligent violation under this paragraph if they make reasonable efforts to grow hemp and the cannabis does not have a THC concentration of more than .5% on a dry weight basis.
(3) A producer that negligently violates this chapter three times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(4) All negligent violations shall be corrected using a corrective action plan and shall, at a minimum, include the following items:

   (a) A reasonable date by which the producer shall correct the negligent act;

   (b) That the producer will periodically report to the department progress in correcting the violation; and

   (c) The department shall conduct an inspection to determine if the action plan has been implemented.

T.C.A. §§ 4-3-203 and 43-27-104

Rule 0080-06-28-.09 Violations is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.09 Violations.

(1) In addition to other requirements of this chapter, licensees shall not:

   (a) Possess or grow rooted hemp outside a licensed growing area unless under transport from a licensed growing area;

   (b) Upon departmental request, refuse to provide full and accurate information regarding the person’s acquisition, cultivation, and distribution of hemp;

   (c) Be convicted of any drug-related felony offense in any state or federal jurisdiction within the previous ten years. Violation of this provision is grounds for immediate denial or revocation of any license issued under this chapter;

   (d) Cultivate, move, or distribute cannabis plants other than hemp;

   (e) Interfere with an authorized representative of the department in the performance of his duties;

   (f) Market or represent hemp or hemp products to be marijuana or any illicit substance in any form; or,

   (g) Violate any state or federal quarantine or order issued by the department.

(2) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.

(3) Each violation of the Act or this chapter is grounds for issuance of stop movement or destruction orders against any cannabis plant held by the violator or his agent; denial or revocation of any license issued under this chapter; actions for injunction; imposition of civil penalties; or referral for criminal investigation pursuant to the Act.

Authority: T.C.A. §§ 4-3-203 and 43-27-104.
* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Aye</th>
<th>No</th>
<th>Abstain</th>
<th>Absent</th>
<th>Signature (if required)</th>
</tr>
</thead>
</table>

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the department of agriculture on 09/24/2019 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: 07/30/2019

Rulemaking Hearing(s) Conducted on: (add more dates). 09/24/2019

Date: 07/09/2020

Signature: ____________________________

Name of Officer: Charlie Hatcher D.V.M.

Title of Officer: Commissioner

Subscribed and sworn to before me on: ____________________________

Notary Public Signature: ____________________________

My commission expires on: ____________________________

Agency/Board/Commission: ____________________________

Rule Chapter Number(s): ____________________________

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. Slattery 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

David Waddell served as the hearing officer at the rulemaking hearing. There were no comments written or oral.
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:

Hemp growers, processors, manufacturers, and retailers are affected by these rules.

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

Approximately 4,000 hemp growers and small hemp businesses are expected to be subject to this 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:

The hemp growers will have additional record keeping requirements as prescribed by the federal program. There is no advanced skill required.

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

Growers are subject to stricter standards for THC content in their hemp crop. Advanced reporting requirements to both state and federal will impact growers.

(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 rules are possible and still be compliant with the federal rules.

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

These rules are consistent with the USDA standards for state hemp programs to qualify for approval.

(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:

Any amount of hemp grown in the state is subject to these rules by both state and federal statutes.
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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

There is no impact on local government.
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;

These rules amend the current rules to make them compliant with federal law that legalized hemp. The changes required are in the areas of inspection, sampling, testing, and violations.

(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;

7 CFR Part 990 Establishment of a Domestic Hemp Production Program. This part establishes the parameters of state hemp programs.

(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;

Hemp growers are primarily affected. Hemp processors, manufacturers, and retailer are tangentially affected. All these groups urge adoption of the 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;


(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 have minimal fiscal impact.

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

David Waddell

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

David Waddell

(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

442 Hogan Road, Nashville, TN 37220; 615-837-5331; David.waddell@tn.gov

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