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: Theresa Denton, General Counsel
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5280
Email: Theresa.denton@tn.gov

Revision Type (check all that apply):
X Amendment
X 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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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>
<thead>
<tr>
<th>Chapter Number</th>
<th>Chapter Title</th>
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<tbody>
<tr>
<td>0080-03-07</td>
<td>Tennessee Dairy Promotion Committee</td>
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<tr>
<td>0080-03-07-.01</td>
<td>Definitions</td>
</tr>
<tr>
<td>0080-03-07-.06</td>
<td>Redirection of Assessment</td>
</tr>
</tbody>
</table>
Amendments
Chapter 0080-03-07-.01

Rule 0080-03-07-.01 Definitions is amended by adding the following definitions for Assessment, Qualified Program, and National Dairy Promotion and Research Board as appropriately numbered paragraphs.


(5) "Qualified Program" means any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.

(6) "National Dairy Promotion and Research Board" means the Board established pursuant to 7 C.F.R. 1150.131 to administer the Dairy Promotion Program.

Authority: T. C. A. § 44-19-120

New
Chapter 0080-03-07-.06

0080-03-07-.06 Redirection of Assessment.

The Committee may, upon receipt of a request from a producer to redirect that portion of the producer's assessment credited to the Committee, honor that request by forwarding an amount equal to the amount of credit that otherwise would be applicable to the Committee, to a qualified program designated by the producer; or, if no qualified program is designated, to the National Dairy Promotion and Research Board.

Authority: T. C. A. § 44-19-120
* 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>
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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 04/04/2018 (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: 01/13/18

Rulemaking Hearing(s) Conducted on: (add more dates). 03/16/18

Date: April 4, 2018
Signature: [Signature]
Name of Officer: Jai Templeton
Title of Officer: Commissioner

Subscribed and sworn to before me on: April 4, 2018
Notary Public Signature: [Signature]
My commission expires on: July 5, 2021

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. Slatery III
Attorney General and Reporter
4/20/2018

Department of State Use Only

Filed with the Department of State on: 4/25/18
Effective on: 7/24/18

Tre Hargett
Secretary of State
Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T. C. A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

The Department of Agriculture held a public hearing on March 16, 2018. Theresa Denton, General Counsel, Tennessee Department of Agriculture, served as hearing officer for the Rulemaking Hearing. The following comments from the public were received at the hearing. There were no written comments received.

Comment #1: From the Executive Director of the Tennessee Dairy Producers Association that the Tennessee Dairy Producers Association supports the rule changes as proposed by the commissioner.

Agency Response: The proposed rule changes were discussed and unanimously approved by the Tennessee Dairy Promotion Committee at its December 28, 2017 meeting.

Comment #2: From Tennessee Dairy Promotion Committee member as to whether the funds to be redirected will come to the Tennessee Dairy Promotion Committee and then be sent to the qualified program of the producer's choice.

Agency Response: The proposed new rule authorizes the Tennessee Dairy Promotion Committee to receive requests from dairy producers to redirect that portion of the producer's assessment credited to the Committee to a qualified program designated by the producer. To prepare for the promulgation of the proposed rule, the Committee, at its March 16, 2017 meeting, adopted a petition form for use by producers to make redirection requests to the Committee. The form includes space for the producer to identify a qualified program for funds redirection. Also, the Committee and Department of Agriculture staff have sought expert advice from The Dairy Alliance on best management practices for accounting and funds transfer for redirection petitions.
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 businesses subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule.

Dairy producers subject to assessments collected pursuant to the federal Dairy and Tobacco Adjustment Act of 1983, which created the National Dairy Promotion and Research Board. Every dairy farmer in the U. S. pays a total assessment of 15 cents per hundredweight (cwt) of milk produced. Of this, 10 cents is paid to a regional qualified state program, which in Tennessee is the Dairy Promotion Committee. The Committee administers the assessment funds by investing the collected funds in marketing, promotion and research activities designed to increase the consumption of milk.

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

Approximately 261 licensed Tennessee dairies.

(3) Project 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:

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

The rule would have no impact on consumers. The impact on dairy producers would be to allow greater autonomy and decision making in that an individual dairy producer could petition the Dairy Promotion Committee to redirect that portion of the assessment credited to the individual producer to a qualified state program of their choice; rather than having all the funds directed according to Committee decisions.

(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.

Several states allow for a producer to request that funds be redirected to a qualified program of the producer's choice. This choice is what is intended by these proposed rule amendments.

(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 covered by this rule will compromise the intent of the rule, which is to allow greater decision making by all dairy producers in the direction of assessed funds administered by the Dairy Promotion Committee.

Impact on Local Governments

SS-7039 (November 2017) 5 RDA 1693
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)

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;

Pursuant to the federal Dairy and Tobacco Adjustment Act of 1983, which created the National Dairy Promotion and Research Board, every dairy farmer in the U. S. pays a total assessment of 15 cents per hundredweight (cwt) of milk produced. Of this, 10 cents is paid to a regional qualified state program, which in Tennessee is the Dairy Promotion Committee. This Committee was created in 1984 by statute, the Dairy Industry Promotion Act, T. C. A. 44-19-101 et seq., to administer the assessment funds by investing the collected funds in marketing, promotion and research activities designed to increase the consumption of milk. The Committee represents approximately 270 licensed dairies and is an 11 member committee appointed by the Commissioner of Agriculture.

This rule will allow dairy producers, subject to assessments pursuant to the federal Act, to petition the Committee for the redirection of an individual’s assessment to a qualified state program of their choice or to the national program.

This rule allows the individual dairy producer to have a decision-making role in the direction of assessed funds.

(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.§ 44-19-120 of the Tennessee Dairy Industry Promotion Act provides that “the commissioner may make and promulgate such rules and regulations in accordance with the Uniform Administrative Procedures Act, ...as may be necessary to effectuate the provisions and intent of this chapter.” Further, Section 44-19-114(d) of the Act provides that the “duties and responsibilities of the committee shall be prescribed by the commissioner” and shall include “duties necessary for the operation of the dairy industry promotion program in coordination with the commissioner.”

(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 producers and the TN Dairy Promotion Committee. The Committee unanimously approved this rule at its meeting on Dec. 28, 2017. Individual dairy producers have asked the commissioner to allow the petition for redirection of funds permitted by this 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;

None

(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;

This rule will not have any impact on local government.

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

Keith Harrison, Assistant Commissioner, Consumer & Industry Services
Theresa Denton, General Counsel

SS-7039 (November 2017) 7 RDA 1693
(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Keith Harrison, Assistant Commissioner, Consumer & Industry Services
Theresa Denton, 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

Keith Harrison, Assistant Commissioner, Consumer & Industry Services, 436 Hogan Road, Nashville, TN 37220; (615) 837-5152 keith.harrison@tn.gov
Theresa Denton, General Counsel, 440 Hogan Road, Nashville, TN 37220; (615) 837-5280, theresa.denton@tn.gov

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

Neither federal nor state law relative to the dairy assessment allows for the direct refund of assessed funds to the individual dairy producer. This rule allows for the producer to request a redirection of funds, not a refund.
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).

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<tr>
<td>Contact Person:</td>
<td>Theresa Denton, General Counsel</td>
</tr>
<tr>
<td>Address:</td>
<td>Post Office Box 40627, Nashville, Tennessee</td>
</tr>
<tr>
<td>Zip:</td>
<td>37204</td>
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<tr>
<td>Email:</td>
<td><a href="mailto:Theresa.denton@tn.gov">Theresa.denton@tn.gov</a></td>
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Revision Type (check all that apply):

- [X] Amendment
- [X] 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)

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Amendments
Chapter 0080-3-7-01

Rule 0080-3-7-01 Definitions is amended by adding the following definitions for Assessment, Qualified Program, and National Dairy Promotion and Research Board as appropriately numbered paragraphs.

(1) "COMMITTEE" means Tennessee Dairy Promotion Committee.

(2) "COMMISSIONER" means Commissioner of Tennessee Department of Agriculture.

(3) "PRODUCER" means every person in the State of Tennessee who produces milk or cream from cows and thereafter causes the same to be marketed as milk, cream or other milk and dairy products who have been issued and possess a valid current producer's permit, or certification, issued by the Department of Agriculture.


(5) "QUALIFIED PROGRAM" means any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.

(6) "National Dairy Promotion and Research Board" means the Board established pursuant to 7 C.F.R. 1150.131 to administer the Dairy Promotion Program.

Authority: T. C. A. § 44-19-120

New
Chapter 0080-3-7-06

0080-3-7-06 REDIRECTION OF ASSESSMENT. The Committee may, upon receipt of a request from a producer to redirect that portion of the producer's assessment credited to the Committee, honor that request by forwarding an amount equal to the amount of credit that otherwise would be applicable to the Committee to a qualified program designated by the producer; or, if no qualified program is designated, to the National Dairy Promotion and Research Board.

Authority: T. C. A. § 44-19-120
* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

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I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the ________________ (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: (mm/dd/yy)

Rulemaking Hearing(s) Conducted on: (add more dates). (mm/dd/yy)

______________________________
Name of Officer:

______________________________
Title of Officer:

______________________________
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. 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

SS-7039 (November 2017) 3 RDA 1693