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Sequence Number: 06-11-19
Notice ID(s): 2968
File Date: 6/10/19

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:	David Waddell
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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:	Tennessee Department of Agriculture, Porter Building Conference Room 1		
Address 2:	436 Hogan Road		
City:	Nashville, Tennessee		
Zip:	37220		
Hearing Date :	Wednesday, July 31, 2019		
Hearing Time:	11:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

This rule effectively repeals approximately 11 pages of manufactured food regulations currently applicable to producers of distilled spirits. The department has determined that production of distilled spirits poses a lower risk for adulterated product, and therefore, a portion of general regulations for manufactured food are unduly burdensome to the distilled spirits industry. Accordingly, the rule creates separate licensing and inspection requirements for producers of distilled spirits.

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
0080-04-03	Distilled Spirits

Rule Number	Rule Title
0080-04-03-.01	Scope
0080-04-03-.02	Definitions
0080-04-03-.03	License Application and Fees
0080-04-03-.04	Production Standards
0080-04-03-.05	Sampling and Inspections
0080-04-03-.06	Violations

New

Chapter 0080-04-03
Distilled Spirits

0080-04-03-.01 Scope.

- (1) This chapter applies to any person who produces distilled spirits in commerce.
- (2) Persons licensed under this chapter shall be responsible for operations under their license until it expires or until 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 53-1-207.

0080-04-03-.02 Definitions.

- (1) Terms in this chapter share those meanings of terms set forth in the Tennessee Food, Drug and Cosmetic Act, T.C.A. §53-1-101, et seq.
- (2) When used in this chapter, unless the context requires otherwise:
 - (a) Act means the Tennessee Food, Drug and Cosmetic Act, compiled at T.C.A. §53-1-101, et seq.;
 - (b) Aging means the holding of distilled spirits undisturbed and within a closed container, immediately following distillation typically to acquire some desirable quality to the spirits;
 - (c) Commerce or words of similar import mean involving payment for an item or payment for services incident to production of the item;
 - (d) Distillation means the separation of a component substance from a liquid mixture by successive evaporation and condensation;
 - (e) Distilled spirits means a beverage with an alcohol content of at least eight percent by weight;
 - (f) Food means those articles defined under the Act and includes distilled spirits;
 - (g) Food contact surface means the surface of equipment or utensils that typically touch food or that may convey a substance onto food or another food contact surface; and,
 - (h) Post-maturation means related to any production process (e.g. blending, filtration, bottling, etc.) that follows removal of distilled spirits from distillation or aging, whichever occurs later.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.03 License Application and Fees.

- (1) A distilled spirits license is required per person for each location where distilled spirits are produced in commerce.
- (2) Application for a license shall be made on forms provided by the department, which shall be completed in full and may include:
 - (a) Name of the 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 person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;
 - (e) Address of the location to be licensed for production of distilled spirits in commerce; and,
 - (f) Other information as required by the department.
- (3) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.
- (4) The fee for a distilled spirits license is a Tier 2 annual fee under T.C.A. §43-1-703(f) for production facilities up to 10,000 square feet, and a Tier 3 annual fee under T.C.A. §43-1-703(f) for production facilities larger than 10,000 square feet.
- (5) License applicants shall submit an application and license fee to the department on or before July 1 of each year. Licenses expire on June 30 following their issuance. If an applicant for renewal fails to submit payment of the license fee on or before the following July 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.
- (6) It is the intent of the department that licensees not be unduly required to pay multiple license fees under departmental rules regarding food production. In order to minimize payment of multiple license fees, the department may determine in its discretion the primary business of a licensee (e.g. commercial food manufacturer, retail food store, distilled spirits producer, etc.) and waive those license fees associated with other food licenses issued by the department for ancillary operations of the business. Waiver of license fees for ancillary operations shall not exempt licensees from regulatory requirements otherwise applicable to those ancillary operations.
- (7) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.04 Production Standards.

- (1) Personnel. The following requirements apply to any person working in direct contact with food, food contact surfaces, or food packaging during a post maturation process.
 - (a) Personnel shall not exhibit obvious symptoms of disease, e.g. open lesions, boils, sores, or infected wounds, etc.
 - (b) Personnel shall exhibit adequate hygienic practices and personal cleanliness reasonably necessary to prevent food contamination.

- (c) Personnel shall ensure that gloves worn are impermeable and maintained in a clean and sanitary condition.
 - (d) Personnel shall not store personal belongings or consume food or tobacco in areas where food is exposed or where equipment and utensils are washed.
- (2) Plants and grounds. The following requirements apply to all production facility areas in the immediate vicinity of food, food contact surfaces, or food packaging used in a post maturation process.
- (a) Plants and grounds shall be free of live animal activity, including domestic animals.
 - (b) Plants and grounds shall be free of decomposed pests and equipment, waste, and vegetation that may reasonably attract pests, e.g. birds, rodents, insects, etc. The use of pesticides is permitted only under precautions that adequately protect against contamination of food, food contact surfaces, and food packaging.
 - (c) Plants and grounds shall be constructed of materials that can be adequately cleaned and maintained in good repair reasonably necessary to prevent food contamination.
 - (d) Plants and grounds shall include adequate screening for protection against pests.
 - (e) Plants and grounds shall not allow drip or condensate to contaminate food, food contact surfaces, or food packaging, e.g. from fixtures, ducts, or pipes.
- (3) Facility controls. The following requirements apply to all production facilities licensed for the production of distilled spirits.
- (a) Facilities shall be supplied with sufficient water from a safe and adequate source reasonably necessary to prevent food contamination. Facilities shall provide water of suitable temperature and adequate pressure in all areas where necessary for employee sanitary practices, food processing, and cleaning of food contact surfaces.
 - (b) Facilities shall maintain plumbing of adequate size, design, and construction necessary to convey sewage and liquid waste from the production facility and to prevent backflow or cross connection between potable and non-potable water systems.
 - (c) Facilities shall include hand washing stations supplied with water of a suitable temperature and properly located and stocked (e.g. soap, sanitizers, drying devices, etc.) necessary to facilitate employee handwashing reasonably necessary to prevent food contamination.
- (4) Operations. The following requirements apply to all production facility areas in the immediate vicinity of food, food contact surfaces, or food packaging used in a post maturation process.
- (a) Licensees shall maintain all physical facilities (e.g. buildings, fixtures, storage areas, etc.) in a sanitary condition and maintained in good repair reasonably necessary to prevent food contamination.
 - (b) Licensees shall use only cleaning compounds and sanitizing agents that are free from undesirable microorganisms and that are safe and adequate to clean or sanitize under the conditions of use.
 - (c) Licensees shall clean all food contact surfaces in a manner and frequency reasonably necessary to prevent food contamination.
 - (d) Licensees shall use only equipment and utensils that are designed and constructed of materials that can be adequately cleaned and maintained in good repair reasonably necessary to prevent food contamination.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.05 Sampling and Inspections.

- (1) **Scope.** The department may enter during normal business hours any location, licensed by the department, for purposes of examining and copying of records and inspecting any food, food contact surface, or food packaging used in a post-maturation process as necessary to determine compliance with the Act and this chapter.
- (2) **Sampling.** The department may conduct sampling of any distilled spirit or other material used in post-maturation process at a location licensed by the department. A sample collected according to uniform protocols approved by the commissioner shall be deemed representative of the location, production run, or lesser lot from which the sample was obtained.

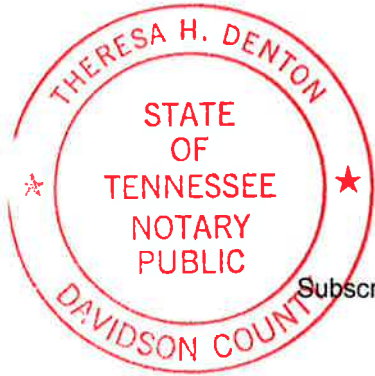
Authority: T.C.A. §§ 4-3-203 and 53-1-207.

0080-04-03-.06 Violations.

- (1) **Requirements of licensees.**
 - (a) In addition to other requirements of the Act and this chapter, licensees shall:
 1. Conduct post-maturation processes only within a permanent structure or building at a location licensed by the department; and,
 2. Maintain post-maturation production areas and records so as to be readily accessible for inspection.
 - (b) In addition to other requirements of the Act and this chapter, licensees shall not:
 1. Produce adulterated food in commerce or allow conditions or practices that may reasonably contaminate food in commerce;
 2. Provide false or misleading information or records to the department; or,
 3. Interfere with an authorized representative of the department in the performance of his duties.
- (2) A person is responsible for violation 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 denial or revocation of any license issued by the department; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 53-1-207.

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: June 6, 2019

Signature: [Handwritten Signature]

Name of Officer: CHARLIE HATCHER

Title of Officer: Commissioner

Subscribed and sworn to before me on: 06-06-19

Notary Public Signature: Theresa H. Denton

My commission expires on: 07-08-19

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Filed with the Department of State on: 6/10/19

[Handwritten Signature]

Tre Hargett
Secretary of State

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