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Sequence Number: 10-19-17
Rule ID(s): 6626
File Date: 10/17/17
Effective Date: 1/12/18

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: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

Revision Type (check all that apply):

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 Please make sure that ALL new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
0080-04-11	Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale
Rule Number	Rule Title
0080-04-11-.01	Purpose
0080-04-11-.02	Definitions
0080-04-11-.03	Limitations of Sale
0080-04-11-.04	Permit Requirements
0080-04-11-.05	General Provisions
0080-04-11-.06	Facility Requirements
0080-04-11-.07	Labeling of Products
0080-04-11-.08	Exemptions

Repeal

Chapter 0080-04-11
Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially
Hazardous Foods Intended for Sale

Chapter 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale is repealed in its entirety.

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

* 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 (board/commission/ other authority) on 08/10/2017 (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: 05/18/17

Rulemaking Hearing(s) Conducted on: (add more dates). 07/11/17

Date: August 10, 2017

Signature: [Handwritten Signature]

Name of Officer: Dai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: August 10, 2017

Notary Public Signature: [Handwritten Signature]

My commission expires on: 09/11/2017



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.

[Handwritten Signature]

Herbert H. Slatery III
Attorney General and Reporter

9/18/2017
Date

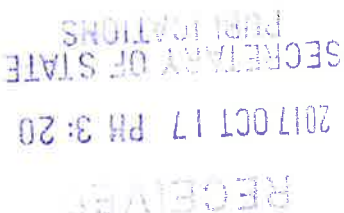
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Filed with the Department of State on: 10/17/17

Effective on: 1/15/18

[Handwritten Signature]

Tre Hargett
Secretary of State



Public Hearing Comments

The Department of Agriculture held a public hearing on July 11, 2017. Jay Miller served as hearing officer for the Rulemaking Hearing concerning repeal of 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale. The public presented no questions or comments 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:

Domestic kitchen facilities directly benefit from the proposed rule.

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

Approximately 150 domestic kitchen firms are subject to the proposed 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:

Administrative costs of affected firms are expected to decrease where the firms are no longer required to undergo routine inspection or licensure. The firms are however still subject to regulatory oversight in the event of complaint or foodborne illness.

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

Domestic kitchens are no longer required to obtain a \$50 license fee or to undergo routine inspection. They are still subject to regulatory oversight for food safety. Domestic kitchens that intend to wholesale food products after the 2017 licensure year will be required to seek a commercial food manufacturer license.

- (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:

This rule repeals existing regulation. No less burdensome method for achieving this purpose is possible.

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

This rule is consistent with exemptions from licensure provided under T.C.A. §53-1-208.

- (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 from this rule will undo the intent to repeal existing regulation.

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://state.tn.us/sos/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;

This rule repeals license and inspection requirements for domestic kitchen facilities.

- (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;

This rule is consistent with exemptions provided under T.C.A. §53-1-208 (amended 2017). Under the statute, unlicensed domestic kitchen firms are allowed to sell food products through direct, retail sales with end consumers. Upon repeal of this rule, domestic kitchen firms that sell food products by other means will require licensure as a commercial food manufacturer.

- (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;

Domestic kitchen facilities are affected by this rule. No public comments have been received urging adoption or rejection of this rule. No public comments have been received to indicate the rules are not easily understood; unnecessary to the public health, safety, and welfare; arbitrary or unreasonable; or adverse to business or individuals.

- (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;

There are no known attorney general opinions or court decisions in this state that directly relate to 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;

The estimated decrease in departmental revenues and expenditures resulting from this rule is minimal.

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

- (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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

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





TENNESSEE DEPARTMENT OF AGRICULTURE

DIVISION OF CONSUMER & INDUSTRY SERVICES

JAI TEMPLETON
COMMISSIONER

HAND DELIVERY

July 20, 2017

Department of State
Division of Publications
8th Floor Snodgrass/TN Tower
312 Rosa L. Parks
Nashville, Tennessee 37243

RE: Rulemaking Hearing July 11, 2017

I served as hearing officer for a Rulemaking Hearing on July 11, 2017, concerning repeal of 0080-04-11 Regulations for Establishments Utilizing Domestic Kitchen Facilities for Bakery and Other Non-Potentially Hazardous Foods Intended for Sale.

The public presented no questions or comments during the hearing.

Sincerely,

Jason B. Miller, Esq. /s/
Tennessee Department of Agriculture
Division of Consumer & Industry Services