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## Steps Involved with Filing Articles of Organization as a Tennessee Processing Cooperative

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The information which follows is a summary of my brief and limited review of the Tennessee Processing Cooperative Act for the purpose of identifying some of the procedures, steps and requirements that a group of farmers should be aware as they plan and/or consider officially organizing as a Processing Cooperative. The information is deemed correct and accurate to the best of my ability and is based on information available to me at the time of my review. The intent of this information is to serve as introductory reading, not a legal interpretation nor a guide to preparing articles of organization. The information is for planning and educational purposes.

Rob Holland

### **Filing of “Articles” of Organization with the Secretary of State**

The process for establishing a “processing cooperative” in Tennessee includes the filing of articles (of organization) with the Secretary of State. The information required to be in these articles is described in the original wording of the Tennessee Processing Cooperative Act. The information required to be in the articles can be assembled and documented in a variety of ways. To date, the Secretary of State has not prescribed a mandatory form to be used with or as the organizational documents of a processing cooperative. However, the information required is similar in format to the requirements for articles of incorporation for other businesses.

Organizational documents must include a statement which makes it clear that the articles are being filed pursuant to the Tennessee Processing Cooperative Act.

As described in the Act, “articles” of organization shall include the following items (exact wording from the law (TCA:43-38-203) is printed in the Appendix)

:

1. Name of the cooperative.
2. Purpose of the cooperative.
3. Name and address of each organizer.
4. Street address and zip code of the principle place of business for the cooperative and the county in which it is located.
5. If anything other than perpetual, explain the period of duration of the cooperative.
6. Capital structure of the cooperative including a statement of the classes (of membership rights) and related rights, preferences and restrictions; the right to share in profits ro distributions of the cooperative and the authority to issue member interests which may be designated to be determined by the board.
7. Provisions for designating the voting governance rights for each membership class and any limitations or restrictions on voting power.
8. A statement that patron membership interests with voting power shall be restricted to one (1) vote for each member regardless of the amount of patron-member interests held in the cooperative or a statement describing the allocation of voting power allocated.
9. A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws.
10. The names , post office address and terms of office of the board of directors.
11. A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interest collectively, a statement that net income allocated to patron membership interests as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and that the records of the cooperative shall include the interests of patron membership interests and nonpatron membership interests which may be further described in the bylaws, of any classes, and in the reserves.
12. The street address and zip code of the initial registered office of the cooperative, the county in which the office is located and the name of its initial registered agent in that office.

Articles must be signed by all organizers. All documents must be typed (or legibly printed) on one side of letter- or legal-size paper. Document must be in the English language. Tennessee Processing Cooperatives must have a registered office and a registered agents in Tennessee.

The appropriate fees must be paid to the Secretary of State. Some of the fees likely to be encountered include:

- ▶ Initial formation fee = \$20.00
- ▶ Copying & filing fee = \$20.00
- ▶ Filing fees for county Register of Deeds in the Tennessee county of the principle office = \$5.00 + 50 cents per page.
- ▶ Annual fee of \$50 per cooperative member (minimum = \$300, maximum = \$3,000)

### **Approval by the Commissioner of Agriculture**

Articles will not be accepted by the Secretary of State unless the articles have been approved in writing by the Commissioner of Agriculture. Approval by the Commissioner of Agriculture shall be based on his determination that the cooperative will provide new or improved markets for agricultural products in Tennessee or that the cooperative will provide opportunities for patron members of the cooperative to participate in the processing of agricultural products in Tennessee. The Commissioner of Agriculture's evaluation will be thorough and will likely represent the most significant review by state government. Articles of organization should be sent first to the Commissioner of Agriculture for review. If approved, the Commission will provide a written letter stating such. The letter should accompany the articles when submitted to the Secretary of State.

### **Bylaws**

A cooperative must have bylaws in writing governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations and distributions of membership interests. Bylaws must include:

- 1) the number of directors and the qualifications, manner of election, powers, duties and compensation, if any, of the directors.
- 2) the qualifications of members and any limitations on their number
- 3) the general governance rights, financial rights, assignability of governance and financial rights and other rights, privileges and obligations of members.

### **Department of Revenue**

In addition to filing articles or organization through the Secretary of State's office, a processing cooperative is responsible for filing (independent of the Secretary of State's office) all necessary and required information/forms with the Tennessee Department of Revenue (whatever they may be).

## APPENDIX

### 43-38-203. Articles of organization - Preparing and filing - Approval - Hearing on rejection of articles.

#### Statute text:

(a) The organizers shall prepare the articles, which shall include:

(1) The name of the cooperative that satisfies the requirements of § 43-38-105;

(2) The purpose of the cooperative;

(3) The name and address of each organizer;

(4) The street address and zip code of the principal place of business for the cooperative and the county in which the office is located;

(5) The period of duration for the cooperative, if the duration is not to be perpetual;

(6) The capital structure of the cooperative, including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue member interests, which may be designated to be determined by the board;

(7) A provision designating the voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this chapter;

(8) A statement that patron membership interests with voting power shall be restricted to one (1) vote for each member, regardless of the amount of patron membership interests held in the affairs of the cooperative, or a statement describing the allocation of voting power allocated as prescribed in this chapter;

(9) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;

(10) The names, post office addresses, and terms of office of the directors of the first board;

(11) A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively, a statement that net income allocated to patron membership interests as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and that the records of the cooperative shall include the interests of patron membership interests and nonpatron membership interests that may be further described in the bylaws, of any classes, and in the reserves; and

(12) The street address and the zip code of the initial registered office of the cooperative, the county in which the office is located, and the name of its initial registered agent in that office.

(b) The articles shall contain the provisions in subsection (a), except that the names, post office addresses of the directors of the first board may be omitted after their successors have been elected by the members or the articles are amended or restated in their entirety.

(c) The articles may contain any other lawful provision.

(d) The articles shall be signed by the organizers.

(e) The original articles shall be filed with the secretary of state. The fee for filing the articles with the secretary of state shall be subject to the provisions of § 43-38-1103(a).

(f) When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that all conditions precedent that are required to be performed by the organizers have been met.

(g) Articles of organization for a cooperative shall not be accepted for filing by the secretary of state unless the articles of organization have been approved in writing by the commissioner. Approval by the commissioner shall be based on a determination by the commissioner that the cooperative will provide new or improved markets for agriculture products in Tennessee or that the cooperative will provide opportunities for patron members of the cooperative to participate in the processing of agricultural products in Tennessee.

(h) The commissioner shall either approve or reject the proposed articles of organization within thirty (30) days after all information required by the commissioner has been submitted.

(i) If a submission of the articles of organization is rejected by the commissioner, the person or persons submitting the articles of organization may request a hearing to be conducted as a contested case hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. There shall be no right to a hearing pursuant to this subsection (i) unless a written request for a hearing is received by the commissioner within thirty (30) days of the commissioner's rejection of the proposed articles of organization.