

**Department of State
Division of Publications**

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Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-205 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

Agency/Board/Commission:	Department of Agriculture
Division:	Division of Regulatory Services
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Revision Type (check all that apply):

- Amendments
- New
- Repeal

Chapter Number	Chapter Title
0080-02-10	Regulations Concerning Horses and Other Equidae
Rule Number	Rule Title
0080-02-10-.01	Equine Infectious Anemia Test Requirements for Tennessee Horses
0080-02-10-.02	Test of Stabled Horses
0080-02-10-.03	Testing of Other Assembled Horses
0080-02-10-.04	Other Required Testing
0080-02-10-.06	Laboratories Conducting Tests for Equine Infectious Anemia

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only ONE Rule Number/Rule Title per row)

Chapter 0080-02-10
Regulations Concerning Horses and Other Equidae

Amendments

Rule 0080-02-10-.01 Equine Infectious Anemia Test Requirements for Tennessee Horses is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Proof of Test Required for Change of Ownership – Subject to the exceptions below, persons assembling for sale, offering for sale, or selling horses or other Equidae, whether for one's own account or for the account of another person, shall have proof that each individual

animal has tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale.

- (a) Foals less than six (6) months of age in the company of their EIA-negative dams are not required to have proof of such test.
 - (b) Horses or other Equidae entering an approved livestock market for sale are not required to be accompanied by such proof when samples are collected for testing prior to sale. Equidae sold with a results-pending market test shall be confined at the market, unless the buyer signs an agreement, provided by the market, in which the buyer agrees to maintain such equine at a specified location until test results are known. The market shall make such agreements available to buyers, and shall retain copies of such agreements for one year from date of sale.
- (2) Persons presenting falsified official EIA test documents are subject to a civil penalty of up to one thousand dollars (\$1,000) for each violation. Each falsified document presented constitutes a separate violation.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

The title of Rule 0080-02-10-.02 Test of Stabled Horses shall be amended to read 0080-02-10-.02 Testing of Stabled Horses. In addition, the rule is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) All horses or other Equidae, except foals less than six (6) months of age in the company of their EIA-negative dam, which have been assembled by more than one owner at boarding, breeding or training stables or pastures, shall be accompanied by proof that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months.
- (2) The owner or manager of said premises shall be responsible for maintaining proof that each individual animal on the premises has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months, and shall make these records available for inspection by all officers or inspectors charged with the enforcement of this section.
- (3) EIA-positive horses or horses that have not been tested for EIA within the preceding twelve (12) months may be stabled at an approved quarantined premises, provided the state veterinarian has issued a written permit for this purpose and the conditions of the quarantine are met and maintained.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

Rule 0080-02-10-.03 Testing of Other Assembled Horses is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) All horses or other Equidae, except foals less than six (6) months of age in the company of their EIA-negative dam, which participate in any horse show, competition or other assembly, except approved livestock market sales where such Equidae are offered for sale, shall be accompanied by evidence that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months.
- (2) The manager of each assembly or event or his agent shall be responsible for ensuring that each animal he enters, issues a permit for, or has control of, is accompanied by proof that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months, and shall not allow animals without such proof to participate in the event, or to congregate with other Equidae. The owner of each animal or his agent shall also be responsible for meeting these requirements.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

Rule 0080-02-10-.04 Other Required Testing is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) When a horse or other member of the Equidae family tests positive on an official confirmatory test for Equine Infectious Anemia, the following Equidae shall be tested for Equine Infectious Anemia within thirty (30) days of the time the infected animal was diagnosed as being EIA-positive:
 - (a) Equidae located on the premises where the positive animal is stabled or pastured.
 - (b) Equidae located adjacent to the infected premises or within two hundred (200) yards.
 - (c) Equidae exposed to the infected animal within the previous six (6) months in the manner described in (a) and (b) above.
 - (d) Equidae exposed to the infected animal within any time period in the manner described in (a) and (b) above, as ordered by the state veterinarian.
- (2) The owner, or his agent, of any animal that has tested positive on an official test, or that has been exposed to a positive animal, shall present such animal to the state veterinarian or his representative and render such assistance as may be required to enable the state veterinarian or his representative to identify such animal(s) or conduct any required tests.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

Rule 0080-02-10-.06 Laboratories Conducting Testing for Equine Infectious Anemia is amended by changing the title to Rule 0080-02-10-.06 Laboratories Conducting Tests for Equine Infectious Anemia, and by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Laboratories conducting tests for Equine Infectious Anemia in Tennessee must be certified as required by the provisions of 9 C.F.R. 75.4 and approved by the Commissioner of the Department of Agriculture or his designated representative.

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on November 18, 2009, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

Date: November 18, 2009

Signature: _____

Name of Officer: Terry J. Oliver

Title of Officer: Deputy Commissioner, TN Department of Agriculture



Subscribed and sworn to before me on: November 18, 2009

Notary Public Signature: _____

My commission expires on: September 8, 2013

All proposed 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.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

4-19-20

Date

Department of State Use Only

Filed with the Department of State on: _____

4/23/10

Effective on: _____

9/28/10

Tre Hargett

Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (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:

Equine sales and sellers would bear the cost and/or benefit from the proposed amendments. Any cost would be reduced for equine sales and sellers, due to the new change of ownership requirements, which would require that horses or other Equidae be accompanied by proof of a negative EIA test conducted within the last twelve months, rather than within the last six months.

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

The proposed amendments will likely affect equine sales, and sellers. There is no way to reliably estimate the number of equine sellers in Tennessee. The number of equine sales (meaning the entity selling equine, not the sales event itself) in Tennessee that would be subject to the proposed amendments is probably 15-20.

- (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:

Costs associated with the proposed amendments would be negligible.

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

The proposed amendments would make existing Department rules internally consistent and bolster disease control safeguards to protect the health of Tennessee's equine against Equine Infectious Anemia. Consumers would not be adversely affected, but would benefit from the added equine protections.

- (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:

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed amendments.

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

The proposed amendments clarify the existing provisions of this chapter, are consistent with other Department rules, and mirror regulations already in force in other states. There is no federal counterpart per se, as the federal regulations concerning Equine Infectious Anemia only cover equine that are known to have tested positive for the disease.

- (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.

Exempting small businesses would render the proposed amendments pointless, and would increase the risk posed to the Tennessee equine industry by Equine Infectious Anemia.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 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;

Language was added to Rule 0080-02-10-.01 to make persons presenting false EIA test documents subject to civil penalties of up to \$1,000 per offense. The forgery of such documents, and the lack of care shown by market personnel in matching test documents with animals, have been major problems for the Division of Animal Health. Language was also added to Rule 0080-02-10-.03 that would exempt from EIA testing foals less than six months of age that are in the company of their EIA-negative dams. The remaining amendments were made to clarify the existing rules.

- (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;

There is no federal law or regulation or state law or regulation mandating the promulgation of, or establishing guidelines for, the new rule.

- (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;

The proposed amendments would most directly affect equine sales and sellers, the number of which is difficult to reliably estimate. Such persons and organizations would most likely not oppose the majority of the proposed amendments, as they mostly clarify existing law. Such persons and organizations would likely oppose the addition of the \$1,000 civil penalty provision, but the Department needs some way to deter persons and organizations from presenting false test documents, as this has been a frequent and ongoing problem at equine sales. False test documents allow equine sellers to move equine of uncertain disease status, thereby placing Tennessee's healthy equine population at extreme risk for the transmission of disease. Finally, such persons and organizations would urge adoption of the proposed amendments to Rules 0080-02-10-.01(1) and (2), which expand the time period during which an individual animal is required to have been tested for Equine Infectious Anemia for change of ownership purposes, from six to twelve months.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no attorney general opinions or judicial rulings that directly relate to the proposed amendments.

- (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;

There should be no difference in state and local government revenues and expenditures, unless money is collected from civil penalties.

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

Dr. Philip Gordon, Assistant State Veterinarian, Tennessee Department of Agriculture

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

Dr. Philip Gordon, Assistant State Veterinarian, Tennessee Department of Agriculture

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Dr. Philip Gordon, Assistant State Veterinarian
Tennessee Department of Agriculture
440 Hogan Road
Nashville, Tennessee 37220
Phone: (615) 837-5184

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

The Department has not received a request for additional information.

RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
ANIMAL INDUSTRIES DIVISION

CHAPTER 0080-2-10
REGULATIONS CONCERNING HORSES AND OTHER EQUIDAE

TABLE OF CONTENTS

0080-2-10-.01	Equine Infectious Anemia Test Requirements for Tennessee Horses	0080-2-10-.04	Other Required Testing
		0080-2-10-.05	Reserved
0080-2-10-.02	Test of Stabled Horses	0080-2-10-.06	Laboratories Conducting Testing for Equine Infectious Anemia
0080-2-10-.03	Testing of Other Assembled Horses		

0080-2-10-.01 EQUINE INFECTIOUS ANEMIA TEST REQUIREMENTS FOR TENNESSEE HORSES.

- (1) Proof of Test Required for Change of Ownership — Subject to the exceptions below, persons assembling for sale, offering for sale, or selling horses or other Equidae, whether for one's own account or for the account of another person, shall have proof that each individual animal has tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale:

(a) All horses or other Equidae except foals less than six (6) months of age in the company of their EIA-negative dam(s) must have a negative official Equine Infectious Anemia test conducted within six (6) months prior to sale are not required to have proof of such test.

(b) This test is not required for equine Horses or other Equidae entering an approved livestock market for sale are not required to be accompanied by such proof when samples are collected for testing prior to sale. Equine Infectious Anemia testing shall be the responsibility of the seller. Equidae sold with a results-pending market test shall be confined at the market, or the buyer shall sign an agreement to maintain such equine at a specified location until test results are known. Equidae testing negative may move in normal trade channels.

- (2) Approved Livestock Market Testing — All horses or other Equidae offered for sale at approved livestock markets shall have evidence of a negative official Equine Infectious Anemia test conducted within six (6) months, or shall have blood collected for testing prior to sale. Equidae sold with a results-pending market test shall be confined at the market, or the buyer shall sign an agreement to maintain such equine at a specified location until test results are known. Equidae testing negative may move in normal trade channels. Persons presenting falsified official EIA test documents are subject to a civil penalty of up to one thousand dollars (\$1,000) for each violation. Each falsified document presented constitutes a separate violation.

Authority: T.C.A. §§4-3-203 and 44-2-102. *Administrative History:* Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990. Amendment filed February 28, 2002; effective June 28, 2002.

0080-2-10-.02 TESTING OF STABLED HORSES.

- (1) Every All horses or other member of the Equidae family, except foals less than six (6) months of age or older in the company of their EIA-negative dam, which have been assembled by more than one owner at boarding, breeding or training stables or pastures, shall be accompanied by proof that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months. shall have tested negative for Equine Infectious Anemia within the preceding twelve (12) months.

- (2) The owner or manager of said premises shall be responsible for maintaining proof that each individual animal on the premises has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months~~shall be responsible for maintaining proof of an official negative test for each animal on the premises,~~ and shall make these records available for inspection by all officers or inspectors charged with the enforcement of this section.
- (3) EIA-positive horses, or horses that have not been untested horses for EIA within the preceding twelve (12) months, may be stabled at an approved quarantined premises upon only with a written permit by the State Veterinarian-veterinarian, provided the conditions of the quarantine are met and maintained.

Authority: T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990.

0080-2-10-03 TESTING OF OTHER ASSEMBLED HORSES.

- (1) EveryAll horses or other member of the eEquidae family, except foals less than six (6) months of age or older in the company of their EIA-negative dam, which participates in any horse show, competition or other assembly, except public horse auctions approved livestock market sales or other event where eEquidae are offered for sale, shall be accompanied by evidence that each individual animal has tested negative on an official test for Equine Infectious Anemia ~~shall be required to be accompanied by proof of an official negative test for Equine Infectious Anemia that was~~ conducted within the preceding twelve (12) months.
- (2) The manager of each assembly or event or his agent shall be responsible for ensuring that each animal which he enters, issues a permits for, or has control of, is accompanied by proof of that each individual animal has tested negative on an official test for Equine Infectious Anemia conducted within the preceding twelve (12) months- an official negative test, and shall not allow animals without such proof not so certified to participate in the event, or to congregate with other eEquidae. The owner of each animal or his agent shall also be responsible for meeting these requirements.

Authority: T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990.

0080-2-10-04 OTHER REQUIRED TESTING.

- (1) When a horse or other member of the eEquidae family tests positive ~~to on~~ an official confirmatory test for Equine Infectious Anemia, testing will be required of the following Equidae shall be tested for Equine Infectious Anemia within thirty (30) days of the time the infected animal was diagnosed as being EIA-positive:
 - (a) All eEquidae located on the premises where the positive animal is stabled or pastured.
 - (b) All eEquidae located adjacent to the infected premises or within two hundred (200) yards.
 - (c) All eEquidae exposed to the infected animal within the previous six (6) months any time period in the manner described in Items 1(a) and 2(b) above, as directed by the state veterinarian.
- ~~(2) This testing shall be conducted within thirty (30) days from the time the infected animal has been diagnosed as positive for Equine Infectious Anemia.~~
- ~~(23) The owner, or his agent, of any animal found that has tested positive to on an official test, or that has been exposed to an animal that has tested positive on an official test, animal, shall present the such animal(s) to~~

the state veterinarian or his representative and render such assistance as may be required to enable the sState vVeterinarian, or his representative, to identify such animals or apply the conduct any required tests or to identify the animal(s).

Authority: T.C.A. §§4-3-203 and 44-2-102. *Administrative History:* Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990.

0080-2-10-05 RESERVED.

0080-2-10-06 LABORATORIES CONDUCTING ~~TESTING-TESTS~~ FOR EQUINE INFECTIOUS ANEMIA.

- (1) Laboratories conducting testing for Equine Infectious Anemia in Tennessee must-shall be certified as required by the provisions 9 C.F.R. ~~§~~-75.4 and approved by the Commissioner of the Department of Agriculture or his designated representative.

Authority: T.C.A. §§4-3-203 and 44-2-102. *Administrative History:* Original rule filed February 28, 2002; effective June 28, 2002.