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Sequence Number: 04-14-10  
 Rule ID(s): 4710  
 File Date: 04/23/2010  
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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  
**Contact Person:** Keith Hodges  
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**Revision Type (check all that apply):**

- Amendments  
 New  
 Repeal

**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 Number	Chapter Title
0080-02-13	Swine Markets
Rule Number	Rule Title
0080-02-13-.01	General

Chapter 0080-02-13  
Swine Markets

Amendments

Rule 0080-02-13-.01 General is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Only swine markets that are approved as having met state and federal standards are authorized to handle swine in Tennessee. Only three (3) types of swine markets will be approved:

(a) Slaughter-Only Market

1. Slaughter-only markets shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
2. All swine shall enter the market under quarantine.

3. All swine shall be identified to the seller. Sows and boars shall be individually identified to the seller.
4. All swine shall be consigned from the market only to an approved slaughter establishment or to another approved market.

(b) Breeding Swine Market

1. All breeding swine markets shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
2. All swine shall be officially, permanently and individually identified to the seller.
3. Except by permission of the state veterinarian, all swine, except piglets less than eight weeks of age in the company of their Brucellosis and Pseudorabies-negative birth mothers, shall:
  - (i) Be accompanied by proof that the individual animal being sold or offered for sale has tested negative on official tests for brucellosis and pseudorabies conducted within thirty (30) days of entering the market; or
  - (ii) Have originated from a Validated Brucellosis-Free and Qualified Pseudorabies-Negative herd that has maintained such statuses throughout testing and be accompanied by proof of such statuses.
4. In addition to the requirements above, imported swine entering breeding swine markets shall be accompanied by an official certificate of veterinary inspection and have an entry permit from the office of the state veterinarian.
5. Persons selling swine or offering swine for sale, including market management, are responsible for ensuring that the provisions of 0080-02-13-.01(b)3 and 0080-02-13-.01(b)4 above are complied with.

(c) Organized Feeder Pig Sale

1. Shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
  2. All pigs shall be individually, officially, and permanently identified to the farm of origin, and shall be consigned from the farm on which they were born.
- (2) Slaughter and feeder classes of swine shall not be commingled in Tennessee markets, nor shall they be received and sold on the same premises on market day.
  - (3) Adherence to these regulations shall be the responsibility of the market's management. It shall also be the responsibility of buyers to consign purchased swine to legal destinations.
  - (4) Swine at Tennessee markets are subject to surveillance testing for Brucellosis, Pseudorabies, or other diseases, as ordered by the Tennessee state veterinarian.

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 19, 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 19, 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 19, 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.

\_\_\_\_\_  
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 105<sup>th</sup> 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:

Non-traditional swine producers and livestock markets approved to handle breeding swine would benefit from the proposed amendments. There would be additional costs for breeding swine sellers, who must test their swine for Brucellosis and Pseudorabies before offering such animals for sale.

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

Currently, there is only one livestock market approved to handle breeding swine in Tennessee. The number of non-traditional swine producers in Tennessee is impossible to determine.

- (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 protect the health of Tennessee's commercial swine industry from the spread of regulatory infectious diseases (e.g. brucellosis and pseudorabies) by requiring testing at sales of non-traditional breeding swine. Consumers would not be adversely affected, but would benefit from the added swine disease protections, which could result in higher food prices if not implemented.

- (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 are consistent with existing federal regulations, and adopt by reference provisions of federal law where noted. The proposed amendments also mirror regulations already in force in other states.

- (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 from the proposed amendments would render them pointless, and would increase the risk posed to the Tennessee commercial swine industry by regulated infectious diseases.

#### **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;

The proposed amendments would substitute the term "breeding swine market" for the term "any class market" in existing Rule 0080-02-13-.01(b), as the USDA no longer recognizes the latter. In addition, they would provide for brucellosis and pseudorabies testing of swine consigned to a breeding swine market - a change that would better protect Tennessee's commercial swine industry against the spread of infectious regulatory diseases.

- (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 non-traditional swine producers and livestock markets approved to handle breeding swine. Such persons and organizations might urge rejection of the proposed amendments, because the additional testing requirements might be viewed as being inconvenient and unnecessarily burdensome.

- (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;

The probable increase or decrease in state and local government revenues and expenditures would be minimal.

- (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  
DIVISION OF ANIMAL ~~INDUSTRIES~~HEALTH

CHAPTER 0080-2-13  
SWINE MARKETS

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**0080-2-13-.01 GENERAL.**

- (1) Only swine markets ~~which that~~ are approved as having meeting state and federal standards are authorized to handle swine in ~~this state~~ Tennessee. Only three (3) types of swine markets will be approved:

~~They are as follows:~~

(a) ~~Slaughter-Only Market~~ Slaughter-Only Market

1. ~~Slaughter-Slaughter-Only M~~ markets must meet all requirements of the appropriate sections of the Code of Federal Regulations, shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
2. All swine shall enter the market under quarantine.
3. All swine shall be identified to the seller. Sows and boars shall be individually identified to the seller.
4. All -swine shall be consigned from the market only to an approved slaughter establishment or to another approved market.

(b) Breeding Swine Market

1. All breeding swine markets shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85.
2. All swine shall be officially, permanently and individually identified to the seller.
3. Except by permission of the state veterinarian, all swine, except piglets less than eight weeks of age in the company of their Brucellosis and Pseudorabies-negative birth mothers, shall:
  - (i) Be accompanied by proof that the individual animal being sold or offered for sale has tested negative on official tests for brucellosis and pseudorabies conducted within thirty (30) days of entering the market; or
  - (ii) Have originated from a Validated Brucellosis-Free and Qualified Pseudorabies-Negative herd that has maintained such statuses throughout testing and be accompanied by proof of such statuses.

4. In addition to the requirements above, imported swine entering breeding swine markets shall be accompanied by an official certificate of veterinary inspection and have an entry permit from the office of the state veterinarian.

5. Persons selling swine or offering swine for sale, including market management, are responsible for ensuring that the provisions of 0080-2-13-.01(b)3 and 0080-2-13-.01(b)4 above are complied with.

~~(b) Any Class Market~~

~~1. Any Class Markets must meet all requirements of the appropriate sections of the Code of Federal Regulations.~~

~~2. All swine shall enter the market under quarantine.~~

~~3. All swine shall be identified to the seller. Sows and boars shall be individually identified to the seller.~~

~~4. All swine shall be consigned from the market only to an approved slaughter establishment or to another approved market, or to an approved Quarantined Swine Feeding Premises.~~

~~(c) Organized Feeder Pig Sale~~

~~1. Shall be approved in accordance with the requirements of 9 C.F.R. 71.20 and meet all the pertinent requirements of 9 C.F.R. 71, 78 and 85, as an Any Class Market in accordance with the Code of Federal Regulations.~~

~~2. Shall have the sponsorship of a recognized swine producer organization.~~

~~3. All feeder pigs sold through the market shall be graded by Tennessee Department of Agriculture graders.~~

~~4. All pigs shall have be individually, officially, and permanently identified to the farm of origin, and shall be consigned from the farm on which they were born.~~

~~5. All sellers of feeder pigs at an organized feeder pig sale shall hold a valid marketing card issued by the sale's management. Such card:~~

~~(i) Shall be based on certification as a pig producer by a home County Extension Leader or recognized feeder pig association, and~~

~~(ii) Shall adhere to standards prescribed by the State Veterinarian.~~

(2) Slaughter and Feeder C classes of S swine shall not be co-mingled in Tennessee markets, nor shall they be received and sold on the same premises on any given market day.

(3) Adherence to the provisions of these regulations shall be the responsibility markets managers of the market's management. It shall also be the responsibility of buyers to consign purchased swine to legal destinations.

(4) Swine at Tennessee markets are subject to surveillance testing for Brucellosis, Pseudorabies, or other

diseases, as ordered by the Tennessee state veterinarian.

**Authority:** *T.C.A. §§44-2-1302; 44-10-204 and 4-3-203. Administrative History: Original chapter filed January 5, 1989; effective February 19, 1989.*