

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 06-01-11
 Rule ID(s): 4955
 File Date: 06/02/2011
 Effective Date: 08/31/2011

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Tennessee Department of Agriculture
Division:	Regulatory Services
Contact Person:	Keith Hodges
Address:	P.O. Box 40627
Zip:	37204
Phone:	615-837-5331
Email:	keith.hodges@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

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

Amendments

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

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 new rule shall read:

0080-02-10-.01 Equine Infectious Anemia – Requirements for Change of Ownership

- (1) Non-Livestock Market Sales — Persons assembling for sale, offering for sale, or selling horses or other Equidae at sales other than livestock markets, whether for one's own account or for the account of another person, shall have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale.
- (2) Livestock Markets — Persons assembling for sale, offering for sale, or selling horses or other Equidae at livestock markets, whether for one's own account or for the account of another person, shall:
 - (a) Have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale. Such horses or other Equidae shall be identified by a legible, unique tattoo or brand; a microchip; a valid equine passport; or an EIA paper with digital photos of the animal (including the animal's entire left and right sides and

front view) as part of the document. Tennessee licensed livestock markets hosting all-registered Equine sales may use breed registry papers as long as the breed registry papers match the official EIA negative test chart; or

- (b) Have blood collected on-site for EIA testing by a Tennessee-licensed and USDA-accredited veterinarian prior to the sale.
- (3) Foals less than six (6) months of age in the company of their EIA-negative dams are not subject to the rules above.

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 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 Tennessee Department of Agriculture on 01/18/2011, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/06/2010

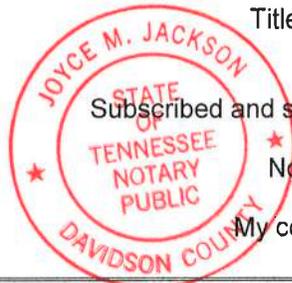
Rulemaking Hearing(s) Conducted on: (add more dates). 01/18/2011

Date: May 5, 2011

Signature: *Julius Johnson*

Name of Officer: Julius Johnson

Title of Officer: Commissioner



Subscribed and sworn to before me on: May 5, 2011

Notary Public Signature: *Joyce M. Jackson*

My commission expires on: 09/08/2013

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.

RECEIVED
 2011 JUN -2 PM 2:00
 SECRETARY OF STATE
 PUBLICATIONS

REC Cooper
 Robert E. Cooper, Jr.
 Attorney General and Reporter

5-19-11
 Date

Department of State Use Only

Filed with the Department of State on:

6/2/11

Effective on:

8/31/11
Tre Hargett

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

No one appeared at the hearing, and no comments were received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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:

Livestock markets with horse sales, and horse buyers and sellers would bear the cost of and/or directly benefit from the proposed rules. Livestock markets pass on the cost of EIA tests to buyers and sellers of horses (as they already do). Livestock buyers and sellers, and the equine industry in general, will benefit from the disease protections made possible by the proposed rules.

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

Livestock markets dealing with horses are subject to the proposed rules. There are eight to twenty of these.

- (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:

There are no reporting, recordkeeping and other administrative costs required for compliance with the proposed rules.

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

Sellers of horses at livestock markets that might have resisted complying with Rule 0080-02-10-.01 in the past will find it harder to do so. Buyers and sellers of horses, and the industry in general, will benefit from the decreased risk of exposure to EIA.

- (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 rules. The proposed rules would not impose any burdens that aren't already imposed under the existing rules.

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

Federal rules, and the rules of every state, impose a range of limits on the movement of horses due to the threat posed by EIA. Such rules typically require that horses bear official identification and proof of a negative result on an official EIA test before being moved or commingled with other horses. A negative official EIA test result is ordinarily required for the importation of horses from another state or country, and a positive test result usually requires that the horse be euthanized or quarantined for the rest of its life. The proposed rules are similar.

(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.

If small businesses were exempted from the proposed rules, it would undermine the purpose of the rules and increase the risk of exposure to EIA.

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)

The proposed rules would have no impact on local governments.

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;

With some exceptions, the proposed rules require that horses being assembled for sale, offered for sale, or sold at livestock markets be officially identified in specified ways. The proposed rules are designed to ensure that the horses being sold are the horses for which test documents were issued.

(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 are no such laws or regulations.

(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;

Horse owners selling at livestock markets and livestock markets with horse sales would be most directly affected by the proposed rules. There were no comments from the public at the rulemaking hearing held on January 18, 2011.

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

There are no such opinions or rulings.

(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 would be no change in state and local government revenues and expenditures as a result of the proposed rules. This assumption and reasoning upon which the estimate is based are that the proposed rules will neither cost, nor generate any revenue for, state and local governments.

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

Charles W. Hatcher, DVM
State Veterinarian

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

Charles W. Hatcher, DVM
State Veterinarian

- (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

Charles W. Hatcher, DVM
Tennessee Department of Agriculture
Division of Regulatory Services – Animal Health
400 Hogan Road
Nashville, Tennessee 37211
(615) 837-5183
charles.hatcher@tn.gov

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

**RULES
OF
THE TENNESSEE DEPARTMENT OF AGRICULTURE
DIVISION OF REGULATORY SERVICES**

**CHAPTER 0080-02-10
REGULATIONS CONCERNING HORSES AND OTHER EQUIDAE**

TABLE OF CONTENTS

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

0080-02-10-.01 EQUINE INFECTIOUS ANEMIA — TEST REQUIREMENTS FOR TENNESSEE HORSES REQUIREMENTS FOR CHANGE OF OWNERSHIP.

- ~~(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.~~
- (1) Non-Livestock Market Sales — Persons assembling for sale, offering for sale, or selling horses or other Equidae at sales other than livestock markets, whether for one's own account or for the account of another person, shall have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to 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.~~
- (2) Livestock Markets — Persons assembling for sale, offering for sale, or selling horses or other Equidae at livestock markets, whether for one's own account or for the account of another person, shall:
- (a) Have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale. Such horses or other Equidae shall be identified by a legible, unique tattoo or brand; a microchip; a valid equine passport; or an EIA paper with digital photos of the animal (including the animal's entire left and right sides and front view) as part of the document. Tennessee licensed livestock markets hosting all-registered Equine sales may use breed registry papers as long as the breed registry papers match the official EIA

negative test chart; or

(b) Have blood collected on-site for EIA testing by a Tennessee-licensed and USDA-accredited veterinarian prior to the sale.

(3) Foals less than six (6) months of age in the company of their EIA-negative dams are not subject to the rules above.

✓ **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. Amendment filed April 23, 2010; effective September 28, 2010.

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

- (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. **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 April 23, 2010; effective September 28, 2010.

0080-02-10-03 TESTING OF OTHER ASSEMBLED HORSES.

- (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 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. Amendment filed April 23, 2010; effective September 28, 2010.

0080-02-10-.04 OTHER REQUIRED TESTING.

- (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. **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 April 23, 2010; effective September 28, 2010.

0080-02-10-.05 RESERVED.

0080-02-10-.06 LABORATORIES CONDUCTING TESTS FOR EQUINE INFECTIOUS ANEMIA.

- (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. **Administrative History:** Original rule filed February 28, 2002; effective June 28, 2002. Amendment filed April 23, 2010; effective September 28, 2010.