

Department of State
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For Department of State Use Only

Sequence Number: 09-03-09
Rule ID(s): 4385
File Date (effective date): 9/2/09
End Effective Date: 3/1/10

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission: Department of Agriculture
Division: Division of Regulatory Services
Contact Person: Keith Hodges
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Rule Type :

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

Pursuant to T.C.A §§ 4-5-208 and 44-2-102, the Department of Agriculture is promulgating emergency rules amending the surveillance requirements for swine under Chapter 0080-02-13. Tenn. Code Ann. § 4-5-208 provides that, if an agency finds that an immediate danger to the public health, safety or welfare exists, and the nature of this danger is such that the use of any other form of rulemaking authorized by this chapter would not adequately protect the public, the agency may, upon stating its reasons in writing for making such findings, proceed without prior notice or hearing to adopt an emergency rule.

Emergency rules are necessary to protect swine and other domestic and wild mammals in Tennessee from recent disease outbreaks in animals on hunting preserves, and in animals supplied to hunting preserves, in several counties on the Cumberland Plateau. Given the effects of disease and the ease with which it can be transmitted if not contained, the Department finds that there is an emergency creating a danger to the public welfare such that the use of any other form of rulemaking authorized by the Administrative Procedures Act would not adequately protect the public.

For a copy of this notice of rulemaking hearing, contact Keith Hodges, Department of Agriculture, Division of Regulatory Services, P.O. Box 40627, Nashville, Tennessee 37204, telephone (615) 837-5331.

Ken Givens, Commissioner
Tennessee Department of Agriculture

Dr. Charles Hatcher, DVM
State Veterinarian
Tennessee Department of Agriculture

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

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

(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. All swine, except piglets less than six 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 through testing.
4. Persons selling swine or offering swine for sale, including market management, are responsible for ensuring that the provisions of Rule 0080-2-13-.01(b)3 above are complied with.

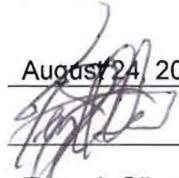
Authority: T.C.A. §§ 4-3-203 and 44-2-102.

* 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 emergency rules, lawfully promulgated and adopted.

Date: August 24, 2009

Signature: 

Name of Officer: Terry J. Oliver

Title of Officer: Deputy Commissioner

Subscribed and sworn to before me on: August 24, 2009



Notary Public Signature: Joyce M Jackson

My commission expires on: September 19, 2009

All emergency 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.

Robert E. Cooper, Jr.
Attorney General and Reporter

9-1-09

Date

Department of State Use Only

Filed with the Department of State on: 9/2/09

Effective for: 180 *days

Effective through: 3/1/10

* Temporary rules may be effective for up to 180 days from the date of filing.

Tre Hargett by M. Hart, PSA

Tre Hargett
Secretary of State

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 0080-2-13-.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. The proposed amendments would also require all persons who sell or offer swine for sale at swine markets to be responsible for ensuring that the provisions of proposed Rule 0080-2-13-.01(b)3 are being complied with.

- (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 any state law or regulation mandating promulgation of these proposed amendments or establishing guidelines relevant thereto.

- (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;

There will be no change in state and local government revenues and expenditures resulting from the promulgation of the proposed amendments. This assumption and reasoning is based on the facts that the proposed amendments do not require industry to pay the State anything, and will not cost the State anything to implement.

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

Dr. Charles W. Hatcher, 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. Charles W. Hatcher, 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. Charles W. Hatcher, State Veterinarian
Tennessee Department of Agriculture
440 Hogan Road
Nashville, Tennessee 37214
Phone: (615) 837-5120

- (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.