

**Department of State
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Sequence Number: 12-26-09
Rule ID(s): 4583
File Date (effective date): 12/22/2009
End Effective Date: 06/20/2010

Emergency Rule Filing Form

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

Agency/Board/Commission:	Health
Division:	Bureau of Health Licensure and Regulation/Animal Welfare
Contact Person:	Alison G. Cleaves, Chief Deputy General Counsel
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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, the Department of Health ("Department") is authorized to promulgate emergency rules in the event that the rules are required by an enactment of the General Assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 591 of the Public Acts of 2009 created the Commercial Breeder Act for the regulation of a commercial breeder's premises which houses dogs and cats that will be bred for the purpose of selling the offspring as companion animals. The public chapter provides that the Commissioner of Health has the authority to grant or deny a commercial breeder's license, to inspect the licensee's premises, and to discipline the license for violation of applicable laws and rules. The public chapter provides that for the purpose of promulgating rules, the act takes effect upon becoming law (July 8, 2009), allowing the Commissioner to engage in rulemaking immediately in an effort to implement the provisions of this act, which become effective on January 1, 2010. In order to meet the January 1, 2010 implementation date established by the General Assembly and considering the length of time necessary to complete the rulemaking process should the rules be promulgated on nonemergency basis, these emergency rules are required in order for the Department to begin implementation of this program. The Department is conducting a rulemaking hearing on December 17, 2009 at 9:00AM (CST) in the Iris Room, Heritage Place, 227 French Landing, Nashville, Tennessee 37243 to consider comments on the adoption of these as permanent rules.

For a copy of these emergency rules contact: Kristann Floyd at the Bureau of Health Licensure and Regulation, 220 Athens Way, Suite 104, Nashville, Tennessee 37243 at (615) 741-8404.

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
1200-33-01	Commercial Breeders
Rule Number	Rule Title
1200-33-01-.01	Purpose
1200-33-01-.02	Definitions
1200-33-01-.03	Application for Licensure
1200-33-01-.04	Licensure and Renewal
1200-33-01-.05	Fees
1200-33-01-.06	Annual Report
1200-33-01-.07	Inspection of Premises and Access to Records
1200-33-01-.08	Standards of Care

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

1200-33-01-.01	Purpose.
1200-33-01-.02	Definitions.
1200-33-01-.03	Application for License.
1200-33-01-.04	Licensure and Renewal.
1200-33-01-.05	Fees.
1200-33-01-.06	Annual Report.
1200-33-01-.07	Inspection of Premises and Access to Records.
1200-33-01-.08	Standards of Care.

1200-33-01-.01 Purpose.

The rules of this chapter implement the Commercial Breeder Act, T.C.A. § 44-17-701, et. seq.

Authority: T.C.A. § 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.02 Definitions.

In addition to the definitions contained in T.C.A. Section 44-17-702, the following definitions are applicable to this chapter:

- (1) "Applicant" means a person who has submitted or is in the process of submitting a completed application to obtain a commercial breeder's license;
- (2) "Commissioner" means the commissioner of health or the commissioner's designee;
- (3) "Department" means the department of health;
- (4) "Licensee" means a person who holds a current, unexpired license as a commercial breeder issued by the commissioner;
- (5) "Premises" means the indoor or outdoor facilities where the dogs and cats receive shelter, food and other care as well as the real property on which the facilities are located.

Authority: T.C.A. §44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.03 Application for License.

- (1) Any person seeking licensure as a commercial breeder shall complete an application on a form prescribed by the commissioner and submit the completed application to the commissioner.
- (2) Applications for licensure are available upon request from the commissioner.
- (3) Any application submitted which lacks required information or reflects a failure to meet any of the requirements for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from the date the application is submitted.

Authority: T.C.A. §§44-17-703(a) and 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.04 Licensure and Renewal.

(1) Licensure.

- (a) A person may submit an application to be licensed as a commercial breeder to the commissioner, along with the required application and initial licensing fee.
- (b) An applicant for licensure shall provide evidence satisfactory to the commissioner that the applicant:
 - (i) Possesses or maintains, under his or her immediate control, twenty (20) or more unsterilized adult female dogs or cats for the purpose of selling the offspring as companion animals;
 - (ii) Has a valid sales tax registration number and is in good standing with the Tennessee department of revenue;
 - (iii) Has never been convicted of a violation of Tenn. Code Ann. §39-14-212 and has not been convicted of any other criminal offense involving an animal provided in Tenn. Code Ann. Title 39, Chapter 14, Part 2, for a period of ten (10) years immediately preceding the date of the application;
 - (iv) Does not operate or maintain a controlling interest in any releasing agency as defined in Tenn. Code Ann. §44-17-702(8); and
 - (v) Has premises for the companion animals that comply with the requirements contained in 9 CFR §3.1 through 3.19 (a copy of which is attached to the regulations as Appendix A and incorporated herein by reference) determined through an inspection conducted by the department.
- (c) An applicant shall submit to a criminal background check and submit the results of the check to the commissioner as a part of the application for licensure. The applicant shall ensure that all employees working on the premises shall submit to a criminal background check.

(2) Renewal.

- (a) A license issued to a commercial breeder pursuant to this chapter shall expire one (1) year from the date of its issuance and shall become invalid on such date unless renewed. Any licensee seeking to renew a license after the license expiration date shall file a new application.
- (b) A commercial breeder may renew a current, valid license by submitting a renewal form approved by the commissioner, the required renewal fee, and any other information required for renewal, to the commissioner no earlier than one hundred and twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (c) Any portion of a licensee's renewal submitted by mail to the commissioner shall be deemed to have been submitted on the date of the official postmark on such mail.

Authority: T.C.A. §§44-17-704, 44-17-705, 44-17-707, and 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.05 Fees.

(1) Application and initial license fee.

- (a) Between twenty (20) and forty (40) unsterilized adult female cats or dogs.. \$500.00
- (b) Forty-one (41) or more unsterilized adult female cats or dogs.....\$1,000.00

- (2) Renewal fee.
 - (a) Between twenty (20) and forty (40) unsterilized adult female cats or dogs...\$500.00
 - (b) Forty-one (41) or more unsterilized adult female cats or dogs.....\$1,000.00
- (3) Duplicate license.....\$25.00

Authority: T. C.A. §§44-17-703(b), 44-17-705(a), and 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.06 Annual Report.

- (1) Each licensee shall submit an annual report to the commissioner by July 1st of each year on a form prescribed by the commissioner in compliance with Tenn. Code Ann. §44-17-707.

Authority: T.C.A. §§44-17-707, and 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.07 Inspection of Premises and Access to Records.

- (1) Inspection of Premises.
 - (a) During an inspection or reinspection of the licensee's premises, the licensee shall allow the department inspectors to photograph the premises and the companion animals; and
 - (b) During an inspection or reinspection of a licensee's premises, each licensee shall provide any documentation requested by a department inspector at the time of the request.
- (2) Access to Records.
 - (a) During an inspection or reinspection of the licensee's premises, the licensee shall provide copies of the following records to the department inspector upon request:
 - (i) Each companion animal acquired, held, maintained, bred at the premises and sold, traded, bartered, given away or disposed of from the premises;
 - (ii) The name and address of the person from whom each companion animal was acquired;
 - (iii) The date each companion animal was acquired and removed from the premises;
 - (iv) A description of each companion animal showing age (including date of birth), size, color, distinctive markings, sex, breed and vaccination information. Records shall also include any other significant identification for each animal including an official tag number, tattoo, or microchip number;
 - (v) The name and address of the person to whom any companion animal is sold, traded, bartered or given, showing the method of disposition;
 - (vi) Any statements, notes, correspondence, memoranda, facsimile, records or reports about the prevention, control, and treatment of any companion animal diseases, injuries or conditions as they relate to the condition of the premises; and
 - (vii) Any statements, certifications, correspondence, memoranda, facsimile, or reports from a licensed veterinarian about the companion animals required by 9 CFR §3.1 through 3.19.

- (b) Each licensee shall maintain the records for a period of one (1) year from the date that the companion animal is acquired by the licensee or born on the licensee's premises.

Authority: T.C.A. §§44-17-704, 44-17-705(a), 44-17-708, and 44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

1200-33-01-.08 Standards of Care.

- (1) Each licensee shall comply with 9 CFR §3.1 through 3.19, T.C.A. Title 44, Chapter 17, Part 7, the rules contained in this chapter and all other applicable federal or state laws or rules relative to the premises.
- (2) Each licensee shall ensure that any act that constitutes the practice of veterinary medicine will be performed by an individual licensed as a veterinarian by the Board of Veterinary Medical Examiners.

Authority: T.C.A. §44-17-713 [effective January 1, 2010]; and Chapter 591 of the Public Acts of 2009.

* 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 an emergency rule(s), lawfully promulgated and adopted.

Date: 10-8-09

Signature: Susan R. Cooper, MSN, RN

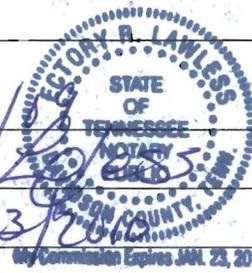
Name of Officer: Susan R. Cooper, MSN, RN

Title of Officer: Commissioner

Subscribed and sworn to before me on: 10/8/09

Notary Public Signature: [Signature]

My commission expires on: 1/23/10



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.

[Signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

12-20-09

Date

Department of State Use Only

Filed with the Department of State on: 12/22/2009

Effective for: 180 days

Effective through: 06/20/2010

* Emergency rule(s) may be effective for up to 180 days from the date of filing.

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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;

Rule 1200-33-01-.01 Purpose- establishes the purpose of the new rules, which is to implement the Commercial Breeder Act. The new law establishes a licensure program for commercial breeders of cats and dogs to be regulated by the Commissioner of Health ("Commissioner"). The law provides that any person who possesses or maintains twenty (20) or more unsterilized adult female cats and dogs under the person's immediate control for the purpose of selling the animals' offspring, must be licensed as a commercial breeder.

Rule 1200-33-01-.02 Definition – provides definitions that are specific to the new law. In particular, the rule provides a definition for commercial breeder premises because the premises will be regulated through an inspection by the Commissioner's designees.

Rule 1200-33-01-.03 Application for License- provides that a person seeking licensure as a commercial breeder shall submit a completed application to the Commissioner and that any application that lacks the required information or reflects the failure to meet the requirements for licensure, will be returned to the applicant and held until the applicant provides the information or meets the requirements for licensure.

Rule 1200-33-01-.04 Licensure and Renewal- provides that a commercial breeder license shall be renewed annually and that should a license not be renewed prior to its expiration date, then the licensee may reapply for a license by filing a new application. A licensee may renew his or her license by submitting a renewal application to the Commissioner with the renewal fee accompanied by any other information required by the Commissioner.

Rule 1200-33-01-.05 Application and Initial License Fee- establishes the initial licensure and renewal fees for commercial breeders based on the number of unsterilized adult female cats and dogs are in the applicant's/licensee's possession and immediate control. The rule also establishes a fee should a licensee need a duplicate license.

Rule 1200-33-01-.06 Annual Report- establishes a date certain when each licensee must submit an annual report to the Commissioner. The applicable statute (Tenn. Code Ann. §44-17-707 provides that each licensee shall submit an annual report containing the following information: the number of dogs and cats in the commercial breeder's possession; the number of dogs and cats sold during the reporting period; the number of dogs and cats bought during the reporting period; and the number of dogs and cats received by the commercial breeder during the reporting period under circumstances other than purchase. The rules provide that the annual report shall be submitted by July 1st each year on a form prescribed by the Commissioner.

Rule 1200-33-01-.07 Inspection of Premises and Access to Records- provides that in the course of conducting an inspection for initial licensure or annual reinspection upon renewal, each licensee shall allow the Department of Health inspectors to photograph the premises and the dogs and cats in the licensee's possession. The rule also provides that each licensee shall provide any documentation requested by a Department inspector upon request in conducting an inspection or reinspection and shall provide the copies of certain records relative to dogs and cats maintained, held, and acquired by the licensee; from whom the animals were acquired; the dates that the animals were acquired; a description of the animals; name and address of the person to whom the animal was sold, traded, bartered, or given; and records relating to the condition of the premises.

Rule 1200-33-01-.08 Standards of Care- establishes that the standard of care that each licensed commercial breeder must achieve is compliance with the federal regulations relative to commercial breeder premises, the commercial breeder act and the rules promulgated relative to commercial breeder premises. The rule also provides that each licensee shall ensure that any acts that constitute the practice of veterinary medicine will be performed by an individual licensed by the Board of Veterinary Medical Examiners.

- (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;

The new rules were promulgated to implement Public Chapter 591 of the 2009 Public Acts codified in Tenn.

Code Ann. §44-17-701 through §44-17-715.

- (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 new rules will affect those individuals operating as commercial breeders as defined by Tenn. Code Ann. §44-17-702 by requiring them to become licensed by the Commissioner of Health.

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

I am unaware of any opinion of the Attorney General or any judicial ruling which directly relates to these rules.

- (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 new rules will provide neither a positive nor a negative fiscal impact because the revenues generated from the program will maintain the program's self-sufficiency.

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

Alison G. Cleaves, Chief Deputy General Counsel, Department of Health, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243.

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

Alison G. Cleaves, Chief Deputy General Counsel, Department of Health, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243.

- (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

Alison G. Cleaves, Chief Deputy General Counsel, Department of Health, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243.

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

Alison G. Cleaves will be able to provide any additional information requested by the Committee.