

The Texas Animal Health Commission (Commission) proposes new §59.11, Executive Director Declaration of a High Risk Disease Movement Restriction Zone, in Chapter 59, which is entitled “General Practices and Procedures”. The new section authorizes the Executive Director to issue an order which will classify an area or a county as being high risk for animals to be infected with or exposed to a disease.

The proposal provides for definitions in subsection (a) for high risk area or county, hold order, and individual herd plan. Subsection (b) provides that the Executive Director may issue an order to test animals in a high risk area or county based on sound epidemiological principles. Subsection (c) provides the elements contained in the order; subsection (d) contains the testing procedures; subsection (e) provides the notice of the order; and subsection (f) provides a procedure for protesting the individual herd test plan.

FISCAL NOTE

Mr. Sami Chadli, Director of Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Chadli has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated is a more efficient and rapid agency response to address areas where there is a high disease risk.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed rule is an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us".

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized by §161.041(b) to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.057 provides the Commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The Commission may prescribe different control measures and procedures for areas with different classifications. In subsection (b), the Commission by rule may designate as a particular classification an area consisting of one or more counties.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

No other statutes, articles, or codes are affected by the proposal.

59.11. Executive Director Declaration of a High Risk Disease Movement Restriction Zone.

(a) Definitions:

(1) High risk area or county--An area or county that is epidemiologically judged to have a high probability for animals to be either infected with or exposed to a disease.

(2) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(3) Individual herd or flock plan--A herd disease management and testing plan to test a herd or flock of animals at high risk for exposure to a disease.

(b) Order to Test Animals in a High Risk County or Area. The Executive Director may eradicate or control any disease or agent of transmission that affects livestock, exotic livestock, domestic fowl, or exotic fowl, by issuing an order designating an area or county as high risk for a disease based on sound epidemiological principles. The order may designate standards to require testing, movement, inspection, and treatment. The epidemiological criteria used for designating an area or county as high risk may include the presence of disease vectors, multiple animals in the area, and common husbandry and animal use practices that could lead to disease exposure.

(c) The order shall contain the following elements:

(1) The epidemiological criteria for which the order is being issued,

(2) A description of the area or county determined to be high risk for a disease that enables a person to identify the area or premises,

(3) If the seriousness of the disease is sufficient to warrant prohibiting the movement of animals using a hold order, the order must state that the movement is prohibited,

(4) Any exceptions, terms, conditions, or provisions prescribed under this chapter must be stated in the order,

(5) The class of persons authorized by the Commission or the Executive Director to issue certificates or permits authorizing movement, and

(6) Any authorized movement certificate or permit must be issued in conformity with the requirements stated in the order:

(A) The Executive Director may provide for a written certificate or written permit authorizing the movement of animals from locations where the animals have been restricted.

(B) The certificate or permit must be issued by a veterinarian or other person authorized by the Commission to issue a certificate or permit.

(d) If the order prohibits the movement of an animal until tested negative for a disease, the Executive Director may prescribe:

(1) any exceptions,

(2) terms,

(3) conditions, or

(4) provisions that the Executive Director considers necessary or desirable to promote the objectives of this chapter or to minimize the economic impact of the animal without endangering those objectives or the health and safety of other animals.

(e) Testing Procedures:

(1) All animals located or maintained in an area shall be presented for testing or retesting at intervals stated in the herd plan until the hold order is released.

(2) All animals to be added to the herd shall be tested prior to commingling with the herd.

(3) All stray animals found in the area shall be presented for testing by the caretaker of the property where located.

(4) All animals identified as positive shall be removed in accordance with Commission requirements.

(f) Publication of Notice. The Executive Director shall give notice of the order:

(1) by publishing notice in a newspaper published in the county in which the quarantine is established, or

(2) by delivering a written notice to the owner or caretaker of the animals or places to be quarantined.

(g) Procedure to Protest the Individual Herd Test Plan. A person may protest an initial test or a herd plan for testing their animals for a disease due to being classified as high risk, after consultation with the state or federal veterinarian assigned to the testing.

(1) To protest, the herd owner must request a meeting, in writing, with the Executive Director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(A) the meeting will be set by the Executive Director no later than 21 days from receipt of the request for a meeting;

(B) the meeting or meetings shall be held in Austin; and

(C) the Executive Director shall render his decision in writing within 14 days from date of the meeting.

(2) Upon receipt of a decision or order by the Executive Director, the herd owner may file an appeal within 15 days in writing with the chairman of the Commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(3) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and chapter 32 of this title (relating to Hearing and Appeal Procedures).

(4) If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the Executive Director may shorten the time limits, as set out in subparagraphs (A) and (B) of this paragraph, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.