

The Texas Animal Health Commission (commission) proposes new §57.13, concerning Indemnification, in Chapter 57, which is entitled “Poultry”. The new section is for the purpose of providing indemnification requirements for poultry.

During the 83rd Texas Legislative Session, House Bill (H.B.) 1521 was passed, which amended the Texas Agriculture Code to extend the commission’s authority to require the slaughter or sale for immediate slaughter of domestic or exposed fowl, if the fowl is exposed to or infected with certain diseases, and compensate domestic and exotic fowl owners. The fowl industry would benefit from similar provisions currently in place for livestock owners. These provisions and measures will also avoid risks to human health due to the exposure to diseased fowl. An outbreak of low path avian influenza provides the commission concern for the potential exposure for the Texas poultry industry if the agency is not able to effectively and efficiently remove exposed or infected poultry. Low pathogenic avian influenza is an infectious and contagious disease that has previously been detected in several states including Texas. H.B. 1521 establishes indemnity provisions for domestic and exotic fowl owners, provided state funding is available.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant additional fiscal implications for local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of this rule poses no significant fiscal impact on small or micro-business.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to have an avenue for handling the disposal of flocks which are either positive or exposed to a poultry disease, which poses a risk to the Texas poultry industry.

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.

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 of disease, and treatment, in accordance with 4 TAC §59.7, and is, therefore, compliant with the Private Real Property Preservation Act in Texas 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.texas.gov”.

STATUTORY AUTHORITY

The new section is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. H.B. 1521 amends §161.0415(a) & (b) and §161.058(a) & (c) of the Texas Agriculture Code. Section 161.0415 now authorizes the commission by order to require the slaughter of livestock, domestic fowl or exotic fowl, under the direction of the commission, or the sale of livestock, domestic fowl or exotic fowl for immediate slaughter at a public slaughtering establishment maintaining federal or state inspection if the livestock, domestic fowl or exotic fowl is exposed to or infected with certain disease. Section 161.058 now authorizes the commission to pay an indemnity to the owner of livestock, domestic fowl or exotic fowl exposed to or infected with a disease if the commission considers it necessary to eradicate the disease and to dispose of the exposed or diseased livestock, domestic fowl or exotic fowl. It also authorizes the commission to spend funds appropriated for the purpose of this section only for direct payment to owners of exposed or infected livestock, domestic fowl or exotic fowl.

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.

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

57.13. Indemnification.

(a) Indemnification to poultry owners. Poultry that are slaughtered in compliance with the disease program standards or as a result of a response on an official test may be indemnified. The commission may pay the owner the unreimbursed amount determined by deducting the salvage value and any other indemnity from the appraised value, subject to the availability of funds.

(b) Flock eligibility for payment of indemnity funds:

(1) The entire flock shall all be under common ownership or management;

(2) An indemnity agreement must be signed and approved for payment by the Executive Director of the commission; and

(3) The flock owner must comply with each indemnity agreement requirement including, but not limited to, those provisions pertaining to flock depopulation and disposal, cleaning, and disinfecting premises and materials, and payment for indemnity.

(c) Criteria for selection of flocks for indemnity payment:

(1) The flock must have a professional diagnosis supported by culture or significant serology and compatible history;

(2) The flock must be recommended for indemnity by the state epidemiologist;

(3) All selections of flocks or poultry for indemnity payment are subject to the availability of funds; and

(4) The commission, through its Executive Director, will determine the amount and number of poultry for which indemnity will be paid.

(d) Poultry infected with or exposed to a disease that are required to be destroyed shall be appraised by an authorized agent of the commission, or, if the Executive Director approves, by a USDA-APHIS representative.

(e) The appraisal of poultry shall be based on the fair market value and shall be determined by the meat, egg production or breeding value of such poultry. Poultry may be appraised in groups providing they are the same species and type. When appraisal is by the head, poultry in the group is the same value per head or when appraisal is by the pound, poultry in the group is the same value per pound.

(f) Appraisals of poultry shall be reported on forms furnished by the commission. Reports of appraisals shall show the number of fowl of each species and the value per head or the weight and value by pound.