

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 51, entitled "Entry Requirements" in 4 TAC §51.9. The purpose of these amendments to Chapter 51 is to remove the Brucellosis test requirement for farmed exotic cervidae to enter the state.

The Commission has had a requirement that exotic cervidae entering Texas be Brucellosis tested. The United States Animal Health Association (USAHA) issued a Resolution that urges that states remove a Brucellosis test requirement for these exotic cervidae moving in interstate commerce. The reason for this request is there are no known reservoirs for Brucellosis outside of the Designated Surveillance Area (DSA) which is located in the Greater Yellowstone Area (GYA) in the states of Montana, Idaho and Wyoming and therefore, the testing requirement to enter Texas is being removed for farmed exotic cervidae. However, for any farmed exotic cervidae that have resided within the DSA of the GYA, they are still required to be tested prior to entry into Texas. The requirement to be Brucellosis tested still applies if the exotic cervidae has been a free ranging exotic cervidae from any state.

FISCAL NOTE

Mrs. Larissa Schmidt, Chief of Staff, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government because of enforcing or administering the rules.

REGULATORY ANALYSIS

Public Benefit: Ms. Schmidt has also determined that for each year of the first five (5) years the rules are in effect, the public benefit anticipated because of enforcing the rules will be removing a requirement to enter Texas.

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

Major Environmental Rule: The Commission has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

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

EIS The Commission has determined that the animal agricultural industries meet the statutory definition of a small or microbusiness (Government Code, Chapter 2006), and that the proposed rule would affect rural communities (as defined by Government Code, Chapter 2006); however, the Commission also has determined that the rule as proposed will not result in adverse economic impacts to small and microbusinesses or rural communities because it is for animals entering the state and not from the state.

RFA: The proposed rule does minimize adverse impacts on affected small businesses and/or rural communities located in Texas by allowing an easier standard to meet for exotic cervidae entering the state.

GGIS: In compliance with the requirements of Government Code, §2001.0221, the Commission has prepared the following Government Growth Impact Statement (GGIS). The rule as proposed, if adopted, will: (1) neither create nor eliminate a government program; (2) not result in an increase or decrease in the number of full-time equivalent employee needs; (3) not result in a need for additional General Revenue funding; (4) not affect the amount of any fee; (5) will modify a pre-existing regulation; (6) will not expand an existing regulation; (7) it may increase the number of individuals subject to regulation; and (8) it will not adversely affect the state's economy.

Rule Reduction Statement The commission has determined that the rule as proposed follows the legislative requirement that the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl within the state from regulatory diseases. It does not impose a direct cost on regulated persons within the state but rather removes a regulatory disease compliance requirement, and therefore it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail at comments@tahc.texas.com.

STATUTORY AUTHORITY

The amendments are 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, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, and entitled Regulation of Movement of Animals, "[t]he 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."

Pursuant to §161.048, and entitled, Inspection of Shipment of Animals or Animal Products, “[t]he commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. 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.”

Pursuant to §161.005, and entitled, Commission Written Instruments, “[t]he 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.”

Pursuant to §161.044, entitled Regulation of Livestock Movement from Stockyards or Railway Shipping Pens, “[t]he commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.”

Pursuant to §161.046, entitled Rules “[t]he commission may adopt rules as necessary for the administration and enforcement of this chapter.”

Pursuant to §161.049, entitled Dealer Records, “[t]he commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.”

Pursuant to §161.061, entitled Establishment, “[i]f the commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.”

Pursuant to §161.081, entitled Importation of Animals, “[t]he commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.”

Pursuant to §161.112, entitled Rules “[t]he commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.”

Pursuant to §161.113, entitled Testing or Treatment of Livestock “[i]f the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule of the commission.”

Pursuant to §161.114, entitled Inspection of Livestock, “[a]n authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.”

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

<rule>

§51.9. Exotic Livestock and Fowl.

(a) Exotic Livestock. The following named species entering the State of Texas shall meet the specific requirements in paragraphs (1) - (4) of this subsection:

(1) Exotic cervidae--Negative [~~Originates from a Certified Free Herd or negative~~] to a brucellosis test within 30 days prior to entry if from the Brucellosis Designated Surveillance Area (DSA) located in the states of Idaho, Wyoming, and Montana or for any free ranging exotic cervidae trapped for movement. Tuberculosis test requirements see §51.10(c) of this title ~~chapter~~ (relating to Cervidae). Susceptible species (i.e. elk) must meet the Chronic Wasting Disease requirements, see §51.10(a) and (b) of this chapter.

(2) Exotic Bovidae--Negative to a brucellosis test within 30 days prior to entry. Negative to a tuberculosis test within 60 days prior to entry.

(3) Camelidae--The executive director of the commission may require a brucellosis and tuberculosis test of any camelidae, from out of state, when there is epidemiological risk of exposure or infection to either disease. Entry may be denied based on the results of these tests or inspections.

(4) Exotic Swine--Tested negative to pseudorabies and brucellosis within 30 days prior to entry or originate from a brucellosis validated free and pseudorabies

qualified free herd, in addition to an entry permit and a certificate of veterinary inspection.

(b) Exotic Fowl. Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1) - (4) of this subsection:

(1) Each bird will be individually identified with either an RFID device, a permanently attached tag or an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloacal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(2) Ratites destined for slaughter only may enter Texas accompanied by an entry permit and either an owner-shipper statement or health certificate without meeting the requirements of paragraph (1) of this subsection.

(3) All ratites originating within Texas and changing ownership or being offered for public sale or sold by private treaty within the state must be individually identified with an implanted electronic device, a tag or band.

(4) All identification must be maintained in the sale records for consignments to a public sale or in the records of the buyer and seller when the animals are sold at private treaty. These records must be maintained for a period of three years.