

EXPLANATION OF PROPOSED RULE

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 49, entitled "Equine". The amendment is for Section 49.1. The purpose of these amendments is to incorporate forms of electronic identification as official identification for equine.

The Commission is participating with a consortium of other state animal health regulatory agencies for fulfilling the objectives and provisions for the interstate movement of equine using an Extended Equine Certificate of Veterinary Inspection (EECVI). The consortium has established a framework in each participating state to enhance the coordination and cooperation regarding the allowance and documentation of interstate movement of equine. This amendment provides that for an official equine passport the official identification includes a microchip.

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 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, the Commission 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 Commission 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.

Economic Impact Statement: 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 recognizes additional acceptable forms of official identification.

Regulatory Flexibility Analysis: The proposed rule does not have an adverse impact on affected small businesses and/or rural communities located in Texas because the rule recognizes pragmatic official identification options for a horse owner.

Government Growth Impact Statement: 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) it modifies a pre-existing regulation; (6) it does 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 provides the individuals regulatory options, 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.gov.

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".

<rule>

§49.1. Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine.

(a) Official Test. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test, and other USDA licensed [USDA-licensed] tests approved by the commission, are the official tests for equine infectious anemia (EIA) in horses, asses, mules, ponies, zebras and any other equine in Texas.

(b) Authorization to conduct test. Only United States Department of Agriculture (USDA) approved [(USDA)-approved] laboratories, including USDA approved off-site laboratories, are allowed to run the AGID and CELISA or other USDA licensed tests and all tests will be official. Only test samples from accredited veterinarians or other TAHC authorized personnel accompanied by a completed VS Form 10-11 can be accepted for official testing.

(c) Official Identification of Equine Tested for EIA. All official blood tests must be accompanied by a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) listing the description of the equine to include the following: age, breed, color, sex, animal's name, ~~and~~ all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes) and unique and permanent forms of identification, such as electronic identification that complies with ISO 11784/11785; or non-ISO electronic identification injected in the equine on or before March 11, 2014; or digital photographs sufficient to identify the individual equine. In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the animal must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the VS Form 10-11. It must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only.

(d) Reactor. A reactor is any equine which discloses a positive reaction to the official test. The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results.

(e) Retest of reactors. Equine which have been disclosed as reactors may be retested prior to

branding provided:

- (1) owners or their agents initiate a request to the TAHC Area Director of the area where the horse is located;
- (2) retests are conducted within 30 days after the date of the original test;
- (3) blood samples for retests are collected by the person who collected the sample for the first test or by TAHC personnel, and the blood samples are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing;
- (4) the individual collecting the retest sample is provided documentation that the animal being retested is the same as the one shown positive on the initial test and can verify the retested equine as being the same as shown on the original test document; and
- (5) the positive animal is held under quarantine along with all other equine on the premise.

(f) Official identification of reactors. A reactor to the official test must be permanently identified using the National Uniform Tag Code number assigned by the USDA to the state in which the reactor was tested followed by the letter "A" (the code for Texas is 74A). The reactor identification must be permanently applied by a representative of the Texas Animal Health Commission who must use for the purpose of identification, a hot-iron brand or freeze-marking brand. The brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Reactors must be branded within ten days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to branding must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly.

(g) Quarantine. Any equine animal found to be a reactor to the official test will be quarantined by a representative of the Texas Animal Health Commission to the premises of its home, farm, ranch or stable until natural death, disposition by euthanasia, slaughter, or disposition to a Texas Animal Health Commission approved, diagnostic or research facility. The quarantine shall restrict the infected equine, all other equine on the premise, and all equine epidemiologically determined to have been exposed to an EIA-positive animal to isolation at least 200 yards away from equine on adjacent premises.

(h) Movement of Reactors and Exposed Equine.

(1) Reactor equine. Following official identification, a reactor must be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved from its home premises either:

(A) Directly to a slaughter plant, slaughter-only market, or slaughter- only buying facility; or

(B) Directly to an approved diagnostic or research facility; or

(C) Directly to a livestock market to be sold for slaughter, provided that within 24 hours prior to entry, the equine is inspected by a TAHC veterinarian or a Texas USDA-accredited veterinarian to ensure the equine displays no clinical signs of EIA and has a normal temperature. The auction market must isolate the positive equine from other equine, pen the positive equine under a roof, and hold the positive equine on the premise for no longer than 24 hours.

(2) Exposed equine. Exposed equine must be identified with an "S" brand placed on the left shoulder or left side of the neck, and be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved either:

(A) Directly to a livestock market for sale directly to slaughter provided the exposed equine is quarantined at the market in isolation from other horses; or

(B) Directly to a slaughter plant, slaughter-only market, or slaughter- only buying facility; or

(C) Directly to an approved diagnostic or research facility.

(i) Requirements for testing equine on quarantined premises. All equine determined to have been on the same premise with an EIA-positive horse at the time the positive horse was bled shall be tested by an accredited veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(j) Requirements for Testing Exposed Equine and High Risk Herds.

(1) Exposed equine. All equine epidemiologically determined to have been exposed to an EIA-positive animal shall be quarantined and tested by an Accredited Veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(2) Whole herd testing. All equine except nursing foals that are part of a herd from which a reactor has been classified shall be tested by an Accredited Veterinarian at owner's expense or by Commission personnel. A herd is:

(A) All equine under common ownership or supervision that are on one premise; or

(B) All equine under common ownership or supervision on two or more premises that are geographically separated, but on which the equine have been interchanged or where there has been contact among the equine on the different premises. Contact between equine on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between premises; or

(C) All equine on common premises, such as community pastures or grazing association units,

but owned by different persons. Other equine owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiologic investigation establishes that equine from the affected herd have not had the opportunity for direct or indirect contact with equine from that specific premise.

(3) High Risk Testing. Herds determined to be at high risk shall be tested by an accredited veterinarian at owner's expense or by commission personnel. High risk herds are those epidemiologically judged by a State-Federal veterinarian to have a high probability of having or developing equine infectious anemia. A high risk herd need not be located on the same premise as an infected or adjacent herd.

(k) Release of EIA quarantine. The EIA quarantine may be released by the Texas Animal Health Commission after all quarantined equine test negative at least 60 days following identification and removal of the last EIA-positive equine as set out in subsections (f) and (h) of this section. Epidemiological data may be considered in the release of the quarantine.

(l) Requirements for Change of Ownership. A negative EIA test within the previous 12 months is required for all equine, except zebras, which are eight months of age or older, changing ownership in Texas, except, if the animal is:

(1) sold to slaughter, to be tested at the slaughter facility at Commission expense; or

(2) a nursing foal that is transferred with its dam and the dam has tested negative for equine infectious anemia during the 12 months preceding the date of the transfer.

(m) Any equine sold, through a market, which has not had a negative EIA test in the twelve months preceding the date of sale must be permitted for movement, by an accredited veterinarian or other authorized state or federal personnel, to slaughter. The permit shall be signed by the consignor and contain information regarding either permanent identification (i.e. branding, tagging or other means acceptable to the commission) of the equine or by the number on a red collar, issued by the commission, to be verified at the slaughter plant, slaughter-only market, or slaughter-only buying facility. These equine shall arrive at the slaughter facility no later than ten days from the date of the issuance of the permit.

(n) Equine animals stabled, boarded or pastured within 200 yards of equine belonging to another person shall be considered to be a congregation point. All equine must have a negative EIA test within the last twelve months.

(o) Equine that participate in any assembly are required to have a current proof of a negative EIA test within the last 12 months. An assembly includes, but is not limited to, parades, rodeos, roping events, and trail rides. Sponsors of an assembly of equine are required to implement a procedure for review of records on each participating equine to confirm proof of a negative EIA test status within the previous 12 months prior to allowing entry of the equine into facilities or locations where the animals will be commingled. Procedures other than confirmation of proof

of EIA test negative status by the event sponsor(s) at the time of arrival at the event shall be submitted to the Executive Director for consideration at least 30 days prior to the event. A decision regarding a proposed procedure will be provided to the sponsor within 10 days of receipt by the Executive Director.

(p) Equine that are in boarding stables, boarding pastures, breeding farms, and training stables are required to have a current proof of a negative EIA test within the last 12 months.

(q) Equine that utilize or ride on publicly accessible equestrian trails, and public lands open to equestrian riding, where a congregation of equine can occur, are required to have a current proof of a negative EIA test within the last 12 months.

(r) Equine entering a pari-mutuel track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.