

The Texas Animal Health Commission (commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 45, §45.3 concerning “Reportable and Actional Disease List”. The purpose of the amendment is to establish and include “Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus” as a disease that is reportable to the commission.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

Malignant Catarrhal Fever is caused by one of eight known members of gamma-herpesvirus and has been documented in over 50 species. Many of the susceptible species are economically important in the state of Texas and include bison, bongo, blackbuck, 3 species of gazelle, roan and sable antelope, and white-tailed deer. While domestic cattle are susceptible, losses are typically minor; this contrasts with bison, which are the most susceptible species known. Bison require as little as 1/10,000th the dose needed to infect cattle, and clinically affected bison almost always die (Gailbreath et al, 2010).

While ovine herpes virus-2 (OvHV-2) has caused catastrophic outbreaks in bison, relatively little is known about the epidemiology of this virus. Even less is known about the other MCF viruses that affect wild and exotic species. Reporting diseases is critical to managing current, and preventing future, outbreaks. But reporting is also a valuable and necessary first step towards understanding disease dynamics and transmission routes.

The proposed amendment to 4 TAC §45.3 will add Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus to the list of diseases that are reportable to the commission in order to address the emerging threat to susceptible species in Texas.

SECTION BY SECTION DISCUSSION

The proposed amendment to §45.3, Reportable and Actionable Disease List, adds Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus to the list of reportable and actionable diseases and agents of disease transmission among multiple species and reorders the list in alphabetical order.

FISCAL NOTE

Ms. Myra Sines, Chief of Staff of the Texas Animal Health Commission, determined that for each year of the first five years the rules are in effect, there will be no additional fiscal implications for state or local government because current commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Sines also determined for the same period that there is no estimated increase or loss in revenue to state or local government as a result of enforcing or administering the rule amendments.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the rules are in effect, the anticipated public benefit, due to enforcing the rules, will allow the agency to more effectively address the risk from animals that have tested positive for MCF caused by a ruminant gamma herpesvirus and reduce the risk of exposure to other animals in the state.

TAKINGS IMPACT ASSESSMENT

The commission determined that the proposal does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. Instead, the proposed amendments relate to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment pursuant to 4 TAC §59.7. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a takings.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Sines also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined

to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the commission determined the following:

1. The proposed rules will not create or eliminate a government program;
2. Implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;
3. Implementation of the proposed rules will not increase future legislative appropriations to the commission;
4. The proposed rules will not increase or decrease the fees paid to the commission;
5. The proposed rules will not create a new rule;
6. The proposed rules expand an existing rule but will not otherwise limit or repeal existing rules;
7. The proposed rules will increase the number of individuals subject to the rules; and
8. The proposed rules will not affect the state's economy.

COSTS TO REGULATED PERSONS

The commission determined there will be no costs associated with adding MCF, gamma herpesvirus, and diseases caused by gamma herpesvirus because the commission does not plan to take action based on diagnosis of MCF. There will be no movement restriction placed on an affected animal or the herd, and no requirements laid out in a herd plan to address MCF in either the affected animal or herd. Any cost would be associated with the act of reporting itself. Per verbal conversation with TVMDL management, MCF is typically diagnosed in Texas animals 15 or fewer times per year. Reporting is typically accomplished via an email or phone call, or both.

The commission also determined the proposed rules follow the legislative requirement that the commission shall protect all livestock from disease the commission determines require control or eradication. Further, Government Code §2001.045, related to increasing costs to regulated persons, does not apply to this rule proposal to adopt a new reportable or actionable disease pursuant to Agriculture Code §161.041, the rules proposed here do not impose a direct cost on regulated persons, including a state agency, a special district, or a local government, within the state. Therefore, it is not necessary to repeal or amend any other existing rule.

REQUEST FOR COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax to (512) 719-0719 or by email to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register*. When faxing or emailing comments, please indicate "Comments on Chapter 45-Reportable and Actionable Diseases" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Agriculture Code, Chapter 161.

Pursuant to §161.041, titled "Disease Control", the commission shall protect all livestock, exotic livestock, domestic fowl, and exotic fowl from diseases the commission determines require control or eradication. Pursuant to §161.041(b) the commission may act to eradicate or control any disease or agent of transmission

for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl. The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment.

Pursuant to §161.043, titled "Regulation of Exhibitions", the commission may regulate the entry of livestock and may require certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, titled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.047, titled "Entry Power", a commissioner or veterinarian or inspector employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under Chapter 161.

Pursuant to §161.048, titled "Inspection of Shipment of Animals or Animal Product", the 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 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 non-communicable disease.

Pursuant to §161.054, titled "Regulation of Movement of Animals; Exception", the commission may by rule regulate the movement of animals, and 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.

Pursuant to §161.056(a), titled "Animal Identification Program", the commission, to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to adopt rules to provide for an

animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, titled "Importation of Animals", the commission by rule may provide the method for inspecting and testing animals before and after entry into the state of Texas. The commission may create rules for the issuance and form of health certificates and entry permits.

Pursuant to §161.101, titled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the disease, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

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

The commission hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

<rule>

Rule §45.3. Reportable and Actionable Disease List

(a) – (b) (No change.)

(c) The commission designates the following as reportable and actionable diseases and agents of disease transmission.

(1) Multiple species:

(A) – (J) (No. change.)

(K) Malignant Catarrhal Fever caused by a ruminant gamma herpesvirus [~~Rabies~~];

(L) Rabies [~~Rift Valley fever~~];

(M) Rift Valley fever [~~Rinderpest~~];

(N) Rinderpest [~~Schmallenberg virus~~];

(O) Schmallenberg virus; ~~Screwworm~~; and

(P) Screwworm; and Vesicular stomatitis virus;

(Q) Vesicular stomatitis virus;

(2) – (8) (No change.)

(d) (No change.)