

The Texas Animal Health Commission (commission) proposes an amendment to Title 4, Texas Administrative Code, Chapter 35, §35.4, concerning Entry, Movement, and Change of Ownership.

BACKGROUND AND SUMMARY OF PROPOSED AMENDMENTS

The proposed amendments to §35.4 remove additional brucellosis entry requirements created by the commission in 2013 for sexually intact cattle entering Texas from the Designated Surveillance Area (DSA) comprised of the states of Idaho, Montana, and Wyoming, established by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS) Veterinary Services (VS). Bovine brucellosis, is a reportable, contagious disease caused by the bacteria *Brucella abortus* (*B. abortus*). *B. abortus* primarily affects cattle, bison, and cervids. Brucellosis is a zoonotic disease; however, eradication efforts along with modern sanitary practices and pasteurization of milk products have greatly decreased the frequency of human infections.

In 2014, USDA-APHIS-VS, Center for Epidemiology and Animal Health (CEAH) released a report of a formal assessment (Portacci et al. 2014) that estimated the risk of brucellosis escape from the combined DSAs to be 0.027 per year (roughly interpretable as an escape expected every 37 years). The USDA-APHIS-VS-CEAH assessment also evaluated the costs and benefits of post-movement requirements and found that the costs of those requirements exceed the costs of outbreak responses near the end of the brucellosis eradication campaign and far exceed the costs of spillover containment responses conducted by Idaho, Montana, and Wyoming.

Following nine (9) years of testing without any detection of brucellosis-infected cattle, and in the absence of significant program deficits found during the USDA-APHIS-VS triennial review of the state brucellosis programs in the DSA states, the commission proposes the amendments to §35.4 to eliminate the additional entry requirements for cattle imported from the DSA.

The TAHC adopted Brucellosis regulations pursuant to Agriculture Code Chapter 161 and 163. Section 161.041(a) and (b) authorizes the commission to adopt any rules necessary to eradicate or control any disease or agent of transmission for any disease that affects livestock, which includes Brucellosis. Section 163.066 authorizes the commission, as a control measure, to regulate the movement of cattle. The commission may require testing, vaccination, or another procedure that is epidemiologically sound before or following the movement of cattle.

SECTION-BY-SECTION DISCUSSION

The proposed amendment to §35.4, Entry, Movement, and Change of Ownership removes the DSA-specific entry requirements for cattle originating from Idaho, Montana, or Wyoming and eliminates §35.4(b)(3)–(5).

FISCAL NOTE

Myra Sines, Chief of Staff, has determined that for each year of the first five years that the rule is in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments. 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 the state or local government as a result of enforcing or administering the rule amendment.

PUBLIC BENEFIT NOTE

Ms. Sines determined that for each year of the first five years the rule is in effect, the public will benefit from the proposed amendment because it facilitates the movement of animals in interstate commerce.

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.

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.

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.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the commission prepared the following Government Growth Impact Statement and determined that during the first five years that the rule is in effect:

1. the amendment will not create or eliminate a government program;
2. implementation of the amendment will not affect the number of employee positions;
3. implementation of the amendment will result in no assumed change in future legislative appropriations;
4. the amendment will not affect fees paid to the commission;
5. the amendment will not create a new rule;
6. the amendment will repeal existing rules;
7. the amendment will not change the number of individuals subject to the rule;
and
8. the amendment will not affect the state’s economy.

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.

COSTS TO REGULATED PERSONS

The commission determined there are no costs anticipated for persons who import cattle into Texas from the DSA. The amendments may reduce costs to producers who import cattle from the DSA because the number and frequency of tests will be reduced.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax to (512) 719-0719 or by e-mail to comments@tahc.texas.gov.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) faxed or emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 35, Brucellosis" in the subject line.

STATUTORY AUTHORITY

The amendment is 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 §161.046, 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 requiring health certificates and entry permits.

Pursuant to §163.002, titled "Cooperative Program", the commission, in order to bring about effective control of bovine brucellosis, to allow Texas cattle to move in interstate and international commerce with the fewest possible restrictions, and to accomplish those purposes in the most effective, practical, and expeditious manner, the commission may enforce this chapter and enter into cooperative agreements with the United States Department of Agriculture.

Pursuant to §163.066, titled "Regulation of Movement of Cattle; Exception", the commission by rule may regulate the movement of cattle and may restrict 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.

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>

§35.4. Entry, Movement, and Change of Ownership

(a) (No change.)

(b) Requirements for cattle entering Texas from other states.

(1) – (2) (No change.)

~~[(3) Requirements for cattle entering Texas directly from the Brucellosis Designated Surveillance Area (DSA) located in the states of Idaho, Wyoming, and Montana.~~

~~—(A) All breeding bulls and sexually intact female cattle entering Texas for purposes other than immediate slaughter or feeding for slaughter in a feedlot shall be tested for brucellosis 60 to 120 days post entry or other time frames as approved by the commission to accommodate unique management practices.~~

~~—(B) Sexually intact female cattle entering Texas that have not calved must be held until tested negative 30 to 90 days after calving (post parturient) or other time frames as approved by the commission to accommodate unique management practices.~~

~~—(C) Nonvaccinated sexually intact female cattle between 4 and 12 months of age entering Texas for purposes other than immediate slaughter or feeding for slaughter shall be officially brucellosis vaccinated prior to entry as provided in~~

paragraph (1) of this subsection. The vaccination exception in paragraph (1)(D) of this subsection does not apply to heifers from the DSA.

~~—(D) All cattle must also meet the applicable requirements contained in Chapter 51 of this title (relating to Entry Requirements). All breeding bulls and sexually intact female cattle require an entry permit from the commission as provided for in §51.2 of this title (relating to General Requirements).~~

~~—(4) Requirements for cattle entering Texas from the states of Idaho, Wyoming, and Montana that currently do not reside in the DSA:~~

~~—(A) All breeding bulls and post parturient female cattle shall enter Texas with one of the following statements on the Certificate of Veterinary Inspection:~~

~~—(i) The cattle represented on this certificate never resided in the DSA; or~~

~~—(ii) The cattle represented on this certificate tested negative for brucellosis at least 60 days after leaving the DSA.~~

~~—(B) Sexually intact female cattle that have not calved shall meet the requirements listed in paragraph (3)(B) of this subsection or may enter Texas with a statement on the Certificate of Veterinary Inspection that the cattle represented on this certificate never resided in the DSA.~~

~~—(C) All cattle must also meet the applicable requirements contained in Chapter 51 of this title.~~

~~—(5) Requirements for cattle entering Texas from states other than Idaho, Wyoming, and Montana that previously resided in the DSA:~~

~~—(A) A statement on the Certificate of Veterinary Inspection indicating that the cattle represented on this certificate tested negative for brucellosis at least 60 days after leaving the DSA; or~~

~~—(B) Must meet the applicable requirements contained in paragraph (3)(A) or (B) of this subsection.]~~

(c) - (d) (No change.)